No. 129628

IN THE
SUPREME COURT OF ILLINOIS

LAURA E. RICE, as Special Representative of the Estate of MARGARET L. RICE, deceased,

Plaintiff-Appellant,

v.

MARATHON PETROLEUM CORPORATION, a Delaware Corporation, SPEEDWAY, LLC., a Delaware Limited Liability Company, and MANOJ VALIATHARA,

Defendants-Appellees.

On Appeal from the
Appellate Court of Illinois, First District, No. 1-22-0155

There heard on appeal from the Circuit Court of Cook County, Illinois
No. 2018 L 000783
The Honorable James M. Varga, Judge Presiding

BRIEF OF PLAINTIFF-APPELLANT

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POINTS AND AUTHORITIES

NATURE OF THE ACTION

This appeal involves the interpretation of certain provisions of the Illinois Environmental Protection Act (hereinafter "the Act"). The underlying cause of action arose out of multiple injuries sustained when Plaintiff's residence exploded due to a leaking underground gasoline storage tank at the Speedway gas station located 1.4 miles from Plaintiff's residence. Counts I, II and III of Plaintiff's First Amended Complaint alleged violations of the Act and sought compensatory and punitive damages. The circuit court dismissed Counts I, II and III of Plaintiff's First Amended Complaint under 735 ILCS 5/2-619.1, holding that the Act does not allow for a private right of action.

Plaintiff appealed the dismissal of Counts I, II and III of her First Amended Complaint to the Illinois First District Appellate Court. The appellate court affirmed the dismissal, holding that the Act does not expressly or implicitly provide for a private right of action to parties injured due to violations of the Act.

ISSUES PRESENTED FOR REVIEW

1. Whether the Act allows for a private right of action, either express or implied, for persons suffering bodily injuries and property damage as the result of a leaking petroleum underground storage tank.

2. Whether, if a private right of action is available to Plaintiff, she is permitted to seek punitive damages based on consideration of the penalty factors listed in Section 42(h) of the Act.

JURISDICTION

The Appellate Court, First District, issued its final, modified decision affirming the circuit court's judgment on March 30, 2023. Plaintiff petitioned for leave to appeal to this Court on May 3, 2023. The Court granted Plaintiff's petition and has jurisdiction over this appeal pursuant to Supreme Court Rule 315.

STATUTES INVOLVED

Pursuant to Supreme Court Rule 341(h)(5), pertinent provisions of the following statutes are reproduced in the Appendix.

1. Ill. Const., Art. XI, §1. Public Policy- Legislative Responsibility
2. Ill. Const., Art. XI, §2. Rights of Individuals
3. 415 ILCS 5/2 (a)(i)(ii)(v)(vi) (b)(c) Environmental Protection Act [Legislative findings; purpose; construction]
4. 415 ILCS 5/3.315 Person
5. 415 ILCS 5/7.2 (a) Identical in substance rulemakings
6. Title XVI. Petroleum Underground Storage Tanks (§§ 5/57 — 5/57.19): 415 ILCS 5/57 Intent and Purpose
7. 415 ILCS 5/57.2 Definitions
8. 415 ILCS 5/57.3 Underground Storage Tank Program
9. 415 ILCS 5/57.4 State Agencies
10. 415 ILCS 5/57.8 (2)(g)(1)(2)(h)(k) Underground Storage Tank Fund; payment; options for State payment; deferred correction election to commence corrective action upon availability of funds
11. 415 ILCS 5/57.12 (a)(1)(g)(h) Underground storage tanks; enforcement; liability

12. 415 ILCS 5/22.2(f)(1)(2)(3)(j)(1)(A)(B)(C)(D) Hazardous waste; fees; liability

13. 415 ILCS 5/42 (a)(d)(h)(1)(2)(3)(4)(5)(6)(7)(8)(i)(3)(i)(ii)(iii)(v)(6)(7)(9) Civil penalties

14. 415 ILCS 5/44(a) Criminal acts; penalties

15. 415 ILCS 5/44(h)(3) Criminal acts; penalties; Violations; False Statements

16. 415 ILCS 5/44(h) (4.5) Criminal acts; penalties; Violations; False Statements

17. 415 ILCS 5/58.1,(2)Title XVII. Site Remediation Program; Applicability

18. 430 ILCS 15/1 Gasoline Storage Act [Unlawful storage, transportation, sale, and use of volatile combustibles]

19. 430 ILCS 15/2(1)(a)(b)(3)(a)(b)(ii) Jurisdiction; regulation of tanks

20. 430 ILCS 15/6.1(a)(b)(1)(2) Financial responsibility

21. 41 Ill. Adm. Code 175: (a)(1)(2)(3)(c) Authority & General Source

22. 41 Ill. Adm. Code 175.610 (a)(1)(2)(3)(c) General Release Detection Requirements for All USTs

23. 41 Ill. Adm. Code 175.620 Release Detection Requirements for Hazardous Substances USTs

24. 41 Ill. Adm. Code 175.630 Methods of and Requirements for Release Detection for Tanks

25. 41 Ill. Adm. Code 175.640 Methods and Requirements for Release Detection for Piping

26. 41 Ill. Adm. Code 176.200 Definitions

27. 41 Ill. Adm. Code 176.205 (a)(c) Applicability

28. 41 Ill. Adm. Code 176.210 (a)(b) Amount

29. 41 Ill. Adm. Code 176.300(a)(1)(2)(3)(A)(B)(b)(c) Reporting of Suspected Releases

30. 41 Ill. Adm. Code 176.310 Release Investigation Reporting and Site Assessment

31. 41 Ill. Adm. Code 176.320 (a)(1)(A)(B)(2)(3)(A)(B)(b)(c) Initial Response and Reporting of Confirmed Releases

32. 41 Ill. Adm. Code 176.340(a)(1)(2) Reporting and Cleanup of Spills and Overfills

33. 41 Ill. Adm. Code 176.350(a)(b)(c) Initial Release Abatement Measures

34. 41 Ill. Adm. Code 176.410 General Requirement to Maintain All Equipment

35. 41 Ill. Adm. Code 176.600 Operator Training; Purpose

36. 35 Ill. Adm. Code 734.100 Applicability

37. 35 Ill. Adm. Code 734.115 Definitions

38. 35 Ill. Adm. Code 734.600 Petroleum Underground Storage Tanks Subpart F. Payment from the Fund; General

39. 35 Ill. Adm. Code 734.620(a)(1)(2) Limitation on Total Payments

40. 35 Ill. Adm. Code 734.645 Subrogation of Rights

41. 35 Ill. Adm. Code 734.650(a)(1)(A)(B)(i)(ii)(b)(3)(4)(d)(2)(5)(6) Indemnification

42. 42 USC §6991(3)(4)(A)(5)(6)(7)(B)(8)(9)(10)Definitions and exemptions

43. 42 USC §6991b(a)(c)(6)(d)(1) Release detection, prevention, and corrective regulations

44. 42 USC §6991c(a)(1)(2)(3)(4)(5)(6)(7)(b)(1)(c)(1) Approval of state programs

45. 42 USC §6991g State Authority

46. 42 USC §6991k(a)(1) Delivery prohibition

47. 40 CFR 280.92 Definition of Terms

48. 40 CFR 280.93 (a)(1)(b)(2)(d)(1)(2)(3)(e)(g)(h) Amount and scope of required financial responsibility

49. 40 CFR 281, Approval of State Underground Storage Tank Programs

50. 40 CFR 281.37(a)(1)(b)(c) Financial responsibility for UST systems containing petroleum

51. 40 CFR 281.39, Operator training

STATEMENT OF FACTS

In October 2017, Plaintiff Margaret Rice (hereinafter "Rice") resided at a condominium complex located in Willowbrook, Illinois. On the morning of October 20, Rice was doing her weekly laundry in the building's communal laundry room. The laundry room is on the first floor of Rice's building, directly behind her dining room. Rice removed her laundry from the washer and placed it in the dryer. C 26328. She placed her quarters into the dryer's payment slot and activated the dryer. C 26329.

The spark from the dryer's activation produced a large and fiery explosion. The extreme force of the explosion blew Rice through the laundry room and into the hallway. The heat from the blast resulted in Rice sustaining second degree burns over significant portions of her body, as well as other injuries. C 26329; C 26330; C 18927, Complaint Ex. #26, November 7, 2017, medical report, Thomas Vizinas, D.O.; C 18928, Complaint Ex. #27 (14 photographs of plaintiff). After the explosion, Rice was transported to Loyola

University Medical Center's Intensive Care Burn Unit where she stayed for fourteen days, until November 3, 2017. She was then transferred and spent the next forty-three days as an inpatient at two rehabilitation facilities being treated for her burns. C 21884. The explosion also caused extensive damage to Rice's condominium and other parts of the building. Due to that damage, she was unable to move back into her home until December 2018. C 26329-30.

The explosion and fire at Rice's home was one of many that occurred that day. C 26330; C. 18972, Complaint Exhibit #32, Media Reports; C 20826, C 26330, C 26342. Various other explosions throughout the area caused numerous injuries and damage to surrounding properties, and caused 14 manhole covers to be blown into the air. C 26330; C 18967 Comp. Ex. #30, P. 6, October 20, 2017, OSFM e-mail.

Subsequent investigations by the Office of the State Fire Marshall (hereinafter "OSFM") determined that the explosions and fires were caused by a defective petroleum underground storage tank (hereinafter "UST") at the Speedway Gas Station (hereinafter "Gas Station #7445") located 1.4 miles from Rice's home. OSFM determined that the top of the storage tank had corroded and left open a space for ground water to ingress into the tank and push out the gasoline. C 26309; C 26341; C 20829; C 29883. Water is denser than gasoline and immediately sinks to the bottom of a UST, pushing out gasoline as it fills the UST with water. C 26349; C 28279, C28280 (R. Carben Dep. P. 79-80). Over a two-week period between October 1 and October 15, 2017, 9,816

gallons of petroleum were displaced by groundwater leaking into the subject UST and released into the environment. C 26317-24; C 18892 Comp. Ex. #21, UST Inventory Report, p. 7, 12; C 18971 Comp Ex. #31, photograph of 10,000 gallon UST being removed from Gas Station #7445; C 29951-29960, 62. The released petroleum migrated at least 7 miles from Gas Station #7445. C 26326-27; C 28265, P. 25 (R. Carben Dep).

Gas Station #7445

In October 2017, Speedway Gas Station #7445 was managed by co-defendant Manoj Valiathara (hereinafter "Manoj V.") The Speedway station receives its gasoline from co-defendant Marathon Petroleum Corporation (hereinafter "MPC"), which also owned co-defendant Speedway LLC. C20833; C 26308; C 26337; C 21679. State law and regulations, specifically those of the OSFM, require Manoj V. and other employees at the station to have a Class C Operators license. This OSFM certification is obtained after passing a test concerning basic safety issues concerning USTs. C 26365-67; 21620-21; C21636; C 21679.

Gas Station #7445 had six USTs – four 10,000-gallon USTs which held petroleum, and two 4,000-gallon USTs, one for kerosene and the other for diesel fuel. The USTs were installed by MPC in 1989. C 26309; C. 19251, Comp. Ex #9, March 15, 1989, Application for Permit of USTs, 5 pages. The UST system was electronically monitored by a device called a Veeder-Root TLS 350 Automatic Tank Gauge System (hereinafter "Veeder-Root" or "ATG"). C 26313;

C. 18860, Comp. Ex.#17, Veeder Root 350 pictures, 9 pages; C 18869 Comp. Ex. #18, Veeder-Root INFORM.Net 4.0 software information. The Veeder-Root system functions both as an inventory tracking system for sales and as a required safety component per Illinois regulations. C 26314; See, 41 Ill. Adm. Code 175.610, General Release Detection Requirements for all USTs.

The Veeder-Root system includes automatic tank gauge probes located inside each UST. These probes simultaneously transmit real-time data to the Veeder-Root control console located in Gas Station #7445, the MPC refinery that supplies the petroleum, and Speedway headquarters in Enron, Ohio, through the web-based INFORM.NET remote fuel management software. C 20833; C 26313-14; C29963. The ATG probes continuously measure the height and volume of gasoline in the UST and, if present, the height and volume of water in a UST. Petroleum USTs should never have water in them. A normal water reading is "0." USTs should never be filled beyond 95% capacity. C 20848; C 20933; C 26313; C 26351; C 26351; C 26368; C 29887.

When the ATG probes measure unusual activity or potentially hazardous conditions existing within the UST system, including unsafe levels of gasoline and/or the presence of water in a UST, the Veeder-Root control console at Gas Station #7445 activates visual warnings and audible alarms. The warnings and/or alarms are displayed on the UST status reports and are also communicated, in real time, directly to MPC and Speedway. C26313-15; C 20833; C 29962-63. When the Veeder-Root control console goes from a

"warning" to an "alarm" status, a very loud audible, "annoying" alarm sounds throughout the station, warning Gas Station #7445 employees inside and outside. The audible alarm is silenced by pressing a button on the Veeder-Root console. The red alarm light will continue to blink until the alarm is cleared. C 20840; C 28268. It also communicates this information directly to Speedway Corporate headquarters and MPC personnel. C 20883.

There is no dispute that Gas Station #7445's Veeder-Root system was functional and in compliance with 41 Ill Admin Code 175.610 at all relevant times. C 26315. Defendant Manoj V. testified that the Veeder-Root system was working properly, as intended. C 21637; C 21700. The OFSM personnel who responded to the release were familiar with the Veeder-Root system at Gas Station #7445 and determined that the data derived from Defendants' Veeder-Root at Gas Station #7445 were reliable, true, and accurate. C 20831-32; C 29894. Defendant Manoj V. testified that it was the Speedway home office's responsibility to react to warnings and alarms coming from the Veeder-Root system at Gas Station #7445 and to correct any problems with the USTs that were producing such warnings or alarms. C21733; C 21792.

Prior Problems with the Subject UST

Defendants were aware of problems with the subject UST due to corrosion at the top of the tank at least as early as 2016. C 26358-61. The corrosion affecting the subject UST "was an ongoing problem that was not being taken care of." C 29884. In July and August 2016, the subject UST had

water entering it, which resulted in a Red Tag and a Notice of Violation being issued by the OSFM on August 3, 2016. C 19039. Both were signed and acknowledged by co-defendant Manoj V. C 19039-41; C 26359-60. Defendants also knew they had a problem with rust and corrosion on other USTs at Gas Station #7445. C 26358; C 19252-65, Comp. Ex. 45, July 28, 2016, through August 24, 2016 e-mail chain of Speedway, with photos, 14-pages, p. 1.

On August 3, 2016, OSFM ordered the subject tank to be immediately emptied. C 19041; C 19046. Defendant complied and emptied the tank on September 23, 2016. On November 1, 2016, defendants notified OSFM that they had put the subject UST out of service. C20885-88; C 19087 Comp. Ex. #40, P. 2. Once a UST is taken out of service, the OSFM stops doing safety inspections of the UST. A UST cannot be put back into service until the OSFM is notified and an inspection is completed. C 20889-90.

Approximately one year after the tank had been taken out of service, the OSFM requested information from defendant Speedway regarding the status of the subject UST. In two emails dated August 30, 2017 and October 5, 2017, the OSFM asked whether Speedway intended to put the subject UST back into service. Speedway did not respond to either of these inquiries from the OSFM. C 26398-99; C 20897-99; C 19215 Comp. Ex. #52, 8/30/17 and 10/5/17 OSFM e-mail requests to Speedway regarding service status of the subject UST. Defendants never made a request to put the subject UST back into service and it remained officially out of service on October 20, 2017. C 20891-92; C26346;

C 18944 Comp. Ex. # 29, P. 1, 10/20/17, OSFM Emergency Response Investigation Report Facility, 4 pages.

Unlawful Deliveries of Petroleum into the Subject UST

On November 14, 2016, approximately two weeks after notifying OSFM that the subject tank had been taken out of service, defendant MPC transported, delivered, and deposited approximately 8,400 gallons of regular unleaded gasoline into the subject UST. C 26315-16. On January 9, 2017, defendant MPC again transported, delivered, and deposited approximately 1,300 additional gallons of gasoline into the subject UST, bringing it to its maximum volume of 9,816 gallons of petroleum. C 26347-48. The petroleum deliveries made by MPC on November 14, 2016, and January 9, 2017 were unlawful. C 20890; C 20893; C 26347-48; C 26360.

Because USTs are not intended to be filled to capacity, the 9,816 gallons of petroleum deposited into the subject UST was an unsafe, hazardous amount of petroleum to be stored in even a properly-functioning UST. Consequently, the deposit of petroleum on January 9, 2017 activated the "high product" alarm in the subject UST. From January 2017 through October 20, 2017, the tank high product alarm and tank maximum product alarms were routinely activated, and then silenced and ignored. C 26348; C 26368. After January 9, 2017, Defendants did not add or remove any gasoline to or from the subject UST. The 9,816 gallons of petroleum in the subject UST remained unlawfully stored until October 2017. C 20890, C 20893; C 26323-24; C 29964.

October 2017

On October 5, 2017, the subject UST's high-water warning was activated. Defendants sent a maintenance crew to examine and respond to the warning. C 26311-12. The inspection crew determined on October 5th that the tank was not operating properly and that it was completely full of liquid. They replaced a probe and the gasoline and water floats in the subject UST. C 18853. On October 9, 2017, the subject UST's high-water alarm was again activated. On October 9, 2017, the subject UST was confirmed to again be taking in water. C 26312. Defendants' contractor vacuumed out approximately 1,000 gallons of water. It was reported that "the water was filling as it was being removed." C 26370. Because the UST had been filled to capacity with petroleum, the presence of 1,000 gallons of water in the UST necessarily meant that approximately 1,000 gallons of petroleum had been released into the environment by October 9. C 28279-80.

On October 11, 2017, defendant sent two additional UST contractors, M & M Mid Valley Service & Supply and DRW Services, to examine the subject UST. Both contractors reported that the water level in the subject UST had risen 8 inches in "a little over one hour" and that they could see and hear the water "pouring into" the subject UST. C 26396; C 19096, Comp. Ex. #43, M & M Mid Valley Records, 10/11/17, 5 pages. The high-water alarm remained active from October 5 until after the explosions of October 20, 2017.

Defendants were required to notify state authorities of a suspected or potential release upon discovering that water was entering the subject UST on October 9, 2017. C 20851; C 20853; C 20936; C 29928. The subject UST should have been emptied immediately after the reports of October 9 and October 11, 2017. C 28280 (R. Carben Dep. P. 83); C 29961. However, there were no corrective actions or repairs attempted after October 11, 2017. C26350. On October 15, 2017, the subject UST's invalid fuel level alarm was activated and not cleared until after the fires and explosions of October 20, 2017. C 26370-71. Defendants never called, reported, or notified state authorities or anyone else about the damage to the UST or the release of petroleum into the environment until after the explosions and fires of October 20, 2017. C 26353, C26355; C 18906 Comp. Ex. #22, Apparent Causal Events, P. 2; C 18908 Comp. Ex. #23, Speedway Store #7445 Chronology, 10/1/17 – 10/20/17, P. 2.

The OSFM Investigation

Pursuant to The Gasoline Storage Act, 430 ILCS 15/2(1)(a) and 15/2(3)(a), the legislature has given the OSFM the authority to promulgate rules and regulations for storage of gasoline and volatile oils, and OSFM has authority over USTs that contain or are designed to contain petroleum. On October 20, 2017, after the explosion at Rice's home, OSFM personnel received emergency requests concerning Gas Station #7445. OSFM sent their most experienced crew, including Tank Specialist Aaron Siegler, Investigator Randy Carben and Scott Johnson, State Administrator for the OSFM Division of

Petroleum and Chemical Safety, who directed OSFM's response to the release. C 20815-16; C 28261; C 28263 (R. Carben P. 16-17); C 29869; C 29874.

It was "chaotic" at both Rice's residence and Gas Station #7445, with many first responders present. C 20824; C 28266 (R. Carben Dep. P. 29); C 26341. At Gas Station #7445, OSFM observed that there was a high level of ground water on top of the USTs and that "everything was coated with gasoline." C 28264, P. 20-21; C 28267, P. 33. The OSFM had three immediate, primary public safety concerns related to the petroleum release from Gas Station #7445: first, the potential for more fires; second, the potential for more explosions; and third, further migration of the petroleum causing more injuries to the public. C29877.

Using a tank calibration chart and the inventory reports concerning the subject UST, OSFM confirmed that Gas Station #7445's Veeder-Root/ATG data from October 2017 was reliable, true and accurate concerning the gasoline and water contents of the subject UST. OSFM determined that on October 5, 2017, the subject UST had a water level of 1.4551 inches. By October 9th, the water level had risen to 10.7233 inches. On October 11th, the water level was 28.4316 inches. On October 14th, the water level was 48.5978 inches, which represented approximately half of the tank's capacity. By 7:45:12 P.M. on October 15, 2017, the subject UST showed a water level of 93.3059 inches and was completely full of water. In short, between October 1 and October 15, 2017, the subject UST went from completely full of petroleum to completely full of

water, with 9,816 gallons of petroleum being displaced and released into the environment. C 26317-24; C 29882; C 29888. Defendants did not disclose this release to authorities until after the explosions and fires of October 20, 2017.

The release of petroleum from the subject UST was the largest in Illinois history. C 20831; C 26341; C 26355. The released gasoline traveled at least 7 miles from Gas Station #7445. C 18967; C 26341. "This is highly unusual in the amount of released product, the distance it travelled, and the damage it caused." C 18967. Seven fire departments, as well as multiple other first responders, responded to the release, with over 250 first responders called to duty. C 26341. OSFM concluded that it was "a ridiculous amount of gasoline that was released, over a ridiculously large affected area, and over a relatively short time." C 18962-63. One OSFM official stated that "this has been, without any exaggeration, an unprecedented incident for this field, not to mention our division. We will study this and learn from it as we move forward, and eventually share what we find with our colleagues in other states and D.C. so they can benefit from our experience. Likely none of them will ever see anything to equal this. I certainly hope we don't again! Houses don't blow up from gasoline leaks. Obviously now we know they do..." C 18962, Comp. Ex. #30, 10/20/17 – 10/28/17, OSFM E-Mail chain, P. 1-2, 3, 5-6.

The OSFM personnel who responded to the release provided information and affidavits concerning their investigation to the Illinois Attorneys' General Office. On November 3, 2017, the Attorney General filed a Verified Complaint

on behalf of the State of Illinois against defendant Speedway as a result of the release. C 19009. The individual paragraphs in the Verified Complaint are all true and accurate. C 20819-20. The State Complaint verifies that the explosion that occurred at Rice's home was caused by the gasoline release from the subject UST at Gas Station #7445 and that she suffered injuries as a result. It also details some of the additional consequences of the release from the subject UST. C 19010-15, ¶11, 15, 17, 20, 23-27, Comp. Ex. #35.

Attempts to Conceal Violations

None of the defendants told the OSFM that they had resumed storing petroleum in the subject UST after it had been ordered drained and taken out of service. None of the defendants told the OSFM about the water entering the subject UST in the first two weeks of October 2017. C 29923. None of the defendants informed the OSFM of their three contractors reports from October 5, 2017, October 9, 2017, or October 11, 2017. C 20855; C 28273 (P. 54 R. Carben); C 29926; C 29927. When OSFM requested the Veeder-Root/ATG data from Defendants, the information concerning the water level and water volume for the subject tank on October 19 and October 20, 2107 had been deleted. C 26361-64; C 29896. This deleted data was "critical information" that would have helped the OSFM in their initial investigation of the release. C 28280 (R. Carben Dep. P. 83-84); C 29896; C 29903; C29904.

Marathon's Response

MPC employee James R. Wilkins sent news of the release and its scope to top executives and/or officers of MPC on October 20, 2017 at 10:03 P.M. and again on October 21, 2017 at 3:46 A.M. Mr. Wilkins acknowledged the "severe burns" sustained by Plaintiff as one of the consequences of the release. MPC was also "reaching out to the Red Cross to assist in the care for displaced residents..." C 26342; C 18998 Comp. Ex. #33, P. 3-4, James Wilkins October 20, 2017 and October 21, 2017, MPC E-Mail chain.

Eve Gray is a member of MPC's Corporate Emergency Response Team, or "CERT" and flew to Illinois on October 21, 2017 to document MPC's response to the release. C 28840; C 28853. CERT has different levels of responses. The Westmont release required the "big response team for big events." C 28842. She was not aware of any petroleum releases larger than the Westmont Speedway release at Gas Station #7445. C 28849. She stayed in Illinois until October 31, 2017, when she turned the documentation role over to Speedway's response/remediation personnel. C 28851.

Shawn Lyon of MPC, who was responsible for directing MPC's CERT response to the release, noted that the public response, "included 100 agencies as first responders (Fire, Police, Hazmat, Public Works, Homeland Security, EPA, State Fire Marshal), over 400 evacuated residences and three injuries in the public" among some of the consequences of the release. C 28925-26; C 29121-22 Plaintiff Ex. #257.

Speedway Investigation

Speedway employees Mitch Oliver, Michelle McKee, and Athan Vinolus arrived at Gas Station #7445 on October 21, 2017 as part of Speedway's investigative team. C 27784. Once there, they met with fellow investigators Thomas Crawford and Joseph Sullivan, who were attorneys at Litchfield Cavo in Chicago, IL. C 27786; C 27821

Mr. Oliver testified that the investigative team concluded that the Veeder Root/ATG at Gas Station #7445 was functioning properly. All the data generated by the Veeder-Root, including the Inventory Reports, Alarm Reports, and Delivery Reports, were all reliable, true, and accurate. C27790-C 27792; C 27872. Mr. Oliver could not account for why the Veeder-Root data given to the OSFM had been altered to exclude information concerning the water level and volume in the subject UST on October 19 and October 20, 2017. C 27941- C 27944. He could not explain why the Veeder-Root data produced by Defendants to Plaintiff's attorney had completely removed the subject UST from the ATG strips for October 20, 2017, as shown in C 18871, Comp. Ex. #19, P. 4. and C 19212, Comp. Ex. #50, P. 2. C 27938-40.

Procedural History

Counts I, II and III of Plaintiff's First Amended Complaint alleged violations of several provisions of the Illinois Environmental Protection Act. C 26332; 26374; 26416. Plaintiff also filed a Motion for Punitive Damages by

Operation of Law as to Counts I, II, and III of her Amended Complaint. C 19261.

The Trial Court granted Defendant's 735 ILCS 5/2-619.1 Motion to Dismiss Counts I, II, and III, holding that "the IEPA, specifically LUST, does not provide for a private right of action. None is expressed. 'Express,' as an adjective, means 'directly, firmly, and explicitly stated,' according to the Merriam-Webster Dictionary." Court Order of October 15, 2021. C 26999. The Court also found no implied private right of action under the Act. Relying on *NBD Bank v. Krueger Ringier, Inc.*, 292 Ill App 3d 691 (1st Dist. 1997), the court ruled that LUST, "was not designed to protect against plaintiff's alleged personal injury and property damages and plaintiffs are not within the class designed to be protected by the statute." C 27000-27001. The dismissal of Counts I, II and III rendered plaintiff's Motion for Punitive Damages moot and was therefore never ruled on by the trial court.

On appeal, the appellate court initially held that it lacked jurisdiction over Plaintiff's appeal. The appellate court subsequently reversed that holding and issued a modified decision on the merits. The court affirmed the lower court's holding that the Act does not provide for an express or implied private right of action. However, the appellate court rejected some of the lower court's reasoning, holding that the trial court read Rice's complaint too narrowly in determining that it alleged only a violation of "LUST *per se*." The court held that, because Plaintiff alleged violation of numerous provisions of the Act, the

Gasoline Storage Act and various associated regulations, she was within the class of persons the statutory scheme was intended to protect and that her injuries were of the type the statutory scheme was designed to prevent. Modified Decision, ¶23. However, the appellate court held that "a private right of action is not necessary to effectuate the purposes of the statute" and therefore does not satisfy the fourth part of the test articulated by this Court in *Fisher v. Lexington Health Care, Inc.*, 188 Ill. 2d 455, 460 (1999). Modified Decision, ¶24.

STANDARD OF REVIEW

"This court's review of a motion to dismiss under either section 2–615 or section 2–619 is *de novo*." *Carr v. Koch*, 2012 IL 113414. When tasked with resolving a matter of statutory interpretation, review is *de novo*. *Cassens Transport Company v. Industrial Commission*, 218 Ill.2d 519, 524 (2006). The question of whether punitive damages are available in a particular cause of action is reviewed *de novo*. *Caparos v. Morton*, 364 Ill.App.3d 159, 178 (1st Dist. 2006).

ARGUMENT

"In interpreting a statute, the primary rule, to which all other rules are subordinate, is to ascertain and give effect to the true intent and meaning of the legislature." *In re Illinois Bell Switching*, 161 Ill.2d 233, 246 (1994). "Statutes must be read as a whole; all relevant parts of the statute must be considered when courts attempt to define the legislative intent underlying the

statute." *People v. N.L Industries*, 152 Ill. 2d 82, 98 (1992). "Statutes which are enacted for the protection and preservation of public health are to be given extremely liberal construction for the accomplishment and maximization of their beneficial objectives." *City of Quincy v. Carlson*, 163 Ill. App. 3d 1049, 1054 (4th Dist. 1987).

The primary issue before the Court is whether the statutory scheme governing petroleum underground storage tanks provides for an express or implied private right of action for persons injured due to violations of those provisions. The secondary issue before the Court is whether, if a private right of action is available, a plaintiff may seek punitive damages against a defendant who violates the Act.

I. OVERVIEW OF THE STATUTORY SCHEME GOVERNING UNDERGROUND STORAGE TANKS

A number of federal and Illinois statutes, and the regulations promulgated thereunder, govern underground storage tanks used for the storage of petroleum products. These various provisions and the interplay between them must be examined as a whole when determining the meaning of any particular provision. See *Flynn v. Industrial Comm'n*, 211 Ill.2d 546, 555 (2004) ("Statutes relating to the same subject must be compared and construed with reference to each other so that effect may be given to all of the provisions to the extent possible, even where an apparent conflict exists.").

The federal government has assumed primary authority to regulate underground storage tanks through the Hazardous and Solid Waste

amendments of 1984 of the Resource Conservation and Recovery Act of 1976. 42 USC Section 6901 *et. seq* (hereinafter "RCRA"). Subchapter IX of RCRA, "Regulations of Underground Storage Tanks," directs the Administrator of the federal Environmental Protection Agency to "promulgate release detection, prevention, and correction regulations applicable to all owners and operators of underground storage tanks, as may be necessary to protect human health and the environment" in accordance with RCRA. 42 U.S.C. § 6991b(a).

RCRA allows individual states to assume primary enforcement authority over underground storage tanks upon submission and approval of "an underground storage tank release detection, prevention, and correction program" that satisfies certain "requirements and standards and provides for adequate enforcement of compliance with such requirements and standards." 42 U.S.C. § 6991c(a). State programs must be shown to be "no less stringent than the corresponding requirements and standards" of RCRA. 42 U.S.C. § 6991c(b). Once the EPA Administrator determines that a proposed state program "provides for adequate enforcement of compliance with the requirements and standards adopted pursuant to this section," the Administrator may approve the state program and transfer primary enforcement responsibility to the State. 42 U.S.C. § 6991c(d).

Pursuant to the requirements of RCRA, Illinois enacted Title XVI of the Act, known as the "Leaking Underground Storage Tank Program" (hereinafter "LUST"), 415 ILCS 5/57, and certain provisions of the Gasoline Storage Act

that govern underground petroleum storage tanks. 430 ILCS 15/2(2)—15/7. LUST is administered cooperatively by both the Office of the State Fire Marshall and the Illinois Environmental Protection Agency. 415 ILCS 5/22.12(a); 415 ILCS 5/57.4. The Gasoline Storage Act grants regulatory and enforcement authority over underground storage tanks to the Office of the State Fire Marshal. OSFM is required to adopt any federal regulations related to underground storage tanks adopted by the EPA Administrator pursuant to RCRA. 430 ILCS 15/2(2)(b)(i). However, OSFM may adopt additional regulations "that are not inconsistent with and at least as stringent" as RCRA and the regulations adopted thereunder. Similarly, Section 7.2 and Section 22.4 of the Act requires adoption of "regulations which are identical in substance to federal regulations or amendments thereto" adopted by the federal EPA to implement RCRA. 415 ILCS 5/7.2; 415 ILCS 5/22.4.

These three enactments –RCRA, LUST and the Gasoline Storage Act – as well as the regulations promulgated under each, form the interconnected statutory bases governing underground storage tanks in Illinois. They do not merely govern the same general subject matter, they are connected by specific reference to one another. See *e.g.*, 415 ILCS 5/57 ("In accordance with the requirements of the Hazardous and Solid Waste Amendments of 1984 of the Resource Conservation and Recovery Act of 1976"; 430 ILCS 15/15/4(a) ("In cooperation with the Illinois Environmental Protection Agency, the Office of the State Fire Marshal shall administer the Illinois Underground Storage

Tank Program in accordance with this Section and Section 22.12 of the Environmental Protection Act.") All three provisions are relevant to determining the intent of the legislature and resolving the matters at issue in this appeal.

II. THE STATUTORY SCHEME EXPRESSLY ALLOWS FOR A PRIVATE RIGHT OF ACTION FOR INJURIES CAUSED BY LEAKING UNDERGROUND STORAGE TANKS

The Illinois Leaking Underground Storage Tank Program (LUST) was created "in accordance with the requirements of the Hazardous and Solid Waste amendments of 1984 of the Resource Conservation and Recovery Act of 1976." 415 ILCS 5/57. Under RCRA, owners or operators of petroleum USTs must comply with financial responsibility requirements that ensure that they have adequate financial resources to take corrective action and compensate third parties for bodily injuries and property damage caused by accidental releases from a UST. See, 40 CFR §§ 280.90 - 280.115. The amounts of such financial assurances differ depending on the operations conducted by the owner or operator and the number of USTs owned or operated. 40 CFR §280.93. Allowable financial mechanisms include self-insurance, guarantees insurance, surety bonds, letters of credit, trust funds, and state requirements, such as state funds or state insurance. See, 40 CFR §§ 280.94 – 280.108. The need to demonstrate the specific ability to compensate third parties for bodily injury and property damage is found throughout RCRA and the regulations promulgated thereunder:

- 40 CFR 280.93, Amount and Scope of Required Financial Responsibility, states that, "owners or operators of petroleum underground storage tanks must demonstrate financial responsibility for taking corrective action **and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks[.]"** (Emphasis Supplied.)
- 40 CFR 280.93(d) states, "except as provided in paragraph e of this section if the owner or operator uses a separate mechanism or separate combinations of mechanisms to demonstrate financial responsibility for: (1) taking corrective action; **(2) compensating third parties for bodily injury and property damage caused by sudden accidental releases or (3) compensating third parties for bodily injury and property damage caused by non-sudden accidental releases . . .**" (Emphasis supplied.)
- 40 CFR 280.93(h) states, "The required per-occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator."
- 40 CFR 281, Approval of State Underground Storage Tanks Programs; 40 CFR 281.37 (Financial responsibility for UST systems containing petroleum) Section 281.37(a) states, "in order to be considered no less stringent than the federal requirements for

financial responsibility for UST systems containing petroleum, the state requirements for financial responsibility for petroleum UST systems must ensure that: (1) owners and operators have $1 million per occurrence for corrective action and **third-party claims** in a timely manner to protect human health and the environment." (Emphasis supplied.)

- State programs must include "requirements for maintaining evidence of financial responsibility for taking corrective action **and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank.**" (Emphasis supplied). 42 USC §6991c(a)(6).

RCRA's numerous references to a UST owner/operator's liability to third parties for bodily injuries caused by RCRA violations make clear that RCRA is intended to provide a private right of action for third-parties injured by such violations. RCRA in fact explicitly authorizes such private rights of action in Section 6972(a), which provides that "any person may commence a civil action on his own behalf . . . against any person . . . who is alleged to be in violation of any permit, standard, regulation, condition, requirement, prohibition or order which has become effective pursuant to this chapter[.] 42 USC § 6972(a)(1)(A). The availability of a private right of action under RCRA has been recognized by numerous courts. *See, City of Evanston v, Texaco, Inc.*, 19 F

Supp. 3d 817 (N.D. Ill. 2014); *Aurora Nat'l Bank v. Tri Star Mktg.*, 990 F. Supp. 1020 (N.D. Ill. 1998); *Dydio v. Hesston Corp.*, 887 F. Supp. 1037 (N.D. Ill. 1995); *Mondry v. Speedway Super America, LLC.*, 1999 U.S. Dist. LEXIS 9095 (N.D. Ill. 1999); *Waldschmidt v. Amoco Oil Co.*, 924 F. Supp. 88 (C.D. Ill. 1996).

Illinois enacted LUST explicitly in accordance with the requirements of RCRA. 415 ILCS 5/57. LUST is a creation of and subject to the requirements of RCRA. To that end, OSFM is required by statute to adopt regulations and amendments governing USTs that are "identical in substance" to those adopted by the EPA Administrator pursuant to RCRA. 430 ILCS 15/2(2)(b)(i). LUST contains the same financial responsibility requirements as those found in RCRA and is directed at remedying the same harms. One of the stated "Intents and Purposes" of LUST is to ensure that UST owners "may satisfy the financial responsibility requirements under applicable State law and regulations." 415 ILCS 5/57. The Gasoline Storage Act has long required that "each owner or operator shall establish and maintain evidence of financial responsibility, as provided in this Section, for taking corrective action **and compensating third parties for bodily injury and property damage.**" 430 ILCS 15/6.1(a)(b) (emphasis supplied). *See also*, 41 Ill. Admin. Code §176.205; 41 Ill. Admin. Code §734.645. Because the Federal and Illinois statutory scheme governing USTs are so closely aligned, the availability of a federal private right of action for violations of RCRA necessarily connotes the availability of a private right of action under Illinois law.

LUST also indemnifies owners and operators for financial liability for damages arising out of the release of petroleum into the environment through the indemnification provisions of 415 ILCS 5/57.8(c)—(e), (g) and (h) and 35 Ill. Admin. Code §734.650. Under these indemnification provisions, an owner or operator is eligible to receive reimbursement from the Underground Storage Tank Fund "for payment of costs incurred as a result of a release of petroleum from an underground storage tank" where

(1) there is a legally enforceable judgment entered against the owner or operator and such judgment was entered due to harm caused by a release of petroleum from an underground storage tank and such judgment was not entered as a result of fraud; or

(2) a settlement with a third party due to a release of petroleum from an underground storage tank is reasonable.

415 ILCS 5/57.8(c).

LUST's definition of "Indemnification" makes clear that judgements or settlements arising from bodily injuries sustained by third parties are among the costs that may be claimed from the Underground Storage Tank Fund:

> "Indemnification" means indemnification of an owner or operator **for the amount of any judgment entered against the owner or operator in a court of law**, . . . or for the amount of any settlement entered into by the owner or operator, if the judgment, order, determination, or settlement **arises out of bodily injury or property damage suffered as a result of a release of petroleum from an underground storage tank** owned or operated by the owner or operator.

415 ILCS 5/57.2. The regulations related to indemnification from the Fund similarly confirm that LUST is intended to ensure payment of a judgement or settlement that "**arises out of bodily injury or property damage**

suffered as a result of release of petroleum from a UST." 35 Ill. Admin. Code §734.650(a)(1)(B)(ii).

LUST is part of the Illinois Environmental Protection Act, which explicitly anticipates that the regulatory scheme is to be "supplemented by private remedies." 415 ILCS 5/2(b). The Act's endorsement of "private remedies" is specifically aimed "to assure that adverse effects upon the environment are fully considered and borne by those who cause them." 415 ILCS 5/2(b). Based on this understanding, Illinois courts have approved private causes of action against violators of the Act as a means of furthering the Acts stated goals. See *People v. Excavating Lowboy Serv*, 388 Ill. App 3d 554, 562 (1st Dist. 2009) ("We perceive that the terms of the Environmental Act confer a liberal grant of authority for suits against those alleged to have harmed or compromised our environment.")

Title XII of the Act, which deals with penalties available under the Act, explicitly states that "The penalties provided for in this Section may be recovered in a civil action." 415 ILCS 5/42(d). Furthermore, in 2003 the legislature amended Section 42(i) of Title XII to include "notice of citizen suit" and "the filing of a complaint by a citizen" as two events relevant to the self-disclosure limitations on damages contained in Section 42(i). Under the amended Section, a penalty may be limited if the violator self-discloses the violation and "the non-compliance was discovered and disclosed prior to . . . (ii) **notice of a citizen suit**; [or] (iii) the filing of a complaint **by a citizen**, the

Illinois Attorney General, or the State's Attorney of the county in which the violation occurred." 735 ILCS 5/42(i)(3)(ii)-(iii) (emphasis added.) These amendments reflect the legislature's prior understanding that third-party actions are available to enforce the Act.

Taken as a whole, the statutory scheme governing underground storage tanks expressly provides for the availability of a private right of action for damages resulting from the release of petroleum from an underground storage tank. LUST is derived from and subject to the requirements of RCRA, which has been recognized to allow for private rights of action. LUST is part of the Illinois Environmental Protection Act, which has been recognized as allowing for private rights of action. LUST is specifically directed at providing compensation for third parties for "bodily injury or property damage suffered as a result of a release of petroleum from an underground storage tank." The express recognition of "bodily injury" as one of the harms the Act is intended to prevent and compensate, coupled with the express approval of "private remedies" to further the Act's purposes, amounts to an express approval of a private right of action for damages caused by the discharge of petroleum from an underground storage tank.

It is undisputed that Plaintiff suffered bodily injuries as a result of defendants' leaking UST, an injury RCRA and LUST were designed to prevent. In enacting LUST pursuant to the requirements of RCRA and as part of the Illinois Environmental Protection Act, the legislature expressly provided for

the same remedies available under RCRA, including a private right of action for bodily injuries. The courts below erred when holding that the statutory scheme does not expressly provide for a private right of action for damages due to bodily injury from a leaking petroleum UST.

III. THE STATUTORY SCHEME IMPLIES A PRIVATE RIGHT OF ACTION FOR INJURIES CAUSED BY LEAKING UNDERGROUND STORAGE TANKS

If this Court determines that the statutory scheme governing USTs does not expressly provide for a private right of action, the availability of a private right of action may be inferred. "A court may determine that a private right of action is implied in a statute that lacks explicit language regarding whether a private right of action shall be allowed." *Pilotto v. Urban Outfitters W., L.L.C.*, 2017 IL App (1st) 160844, P. 22. "In order to find an implied private right of action, a court must find that (1) the plaintiff is a member of the class for whose benefit the statute was enacted, (2) the plaintiff's injury is one the statute was designed to prevent, (3) a private right of action is consistent with the underlying purpose of the statute, and (4) implying a private right of action is necessary to provide an adequate remedy for violations of the statute." *Fisher v. Lexington Health Care, Inc.*, 188 Ill.2d 455, 460 (1999). Plaintiff's cause of action under the Act meets each of *Fisher's* requirements.

A. Plaintiff Is a Member of the Class for Whose Benefit the Statute Was Enacted

The statutory scheme governing underground storage tanks does not merely impose regulatory requirements on UST owners and operators and assess penalties for violations. The statutes, and LUST in particular, are unusual in that they are explicitly concerned with ensuring that those injured by UST releases are actually compensated for their injuries. As discussed above, LUST achieves this goal in two ways First, it requires that UST owners and operators prove that they have the financial means for "compensating third parties for bodily injury and property damage." Second, LUST indemnifies owners and operators for financial liability for damages, including injuries to third parties, arising out of the release of petroleum into the environment through the indemnification provisions of 415 ILCS 5/57.8(c)—(e), (g) and (h) and 35 Ill. Admin. Code §734.650.

When the legislature establishes a statutory scheme with a recovery fund to compensate aggrieved persons or an indemnification clause, it indicates that the legislature expected that private civil actions for damages would be instituted for violations of the act. *See, Sawyer Realty Group, Inc. v. Jarvis Corp.*, 89 Ill. 2d 379, 390, 391 (1982) ("The existence of an express private remedy for indemnification of limited compensatory damages . . . indicates that the General Assembly considered that private civil actions for damages would be instituted for violations of this act.") LUST creates both a recovery fund and an indemnification program, as well as regulations requiring UST owners and operators to demonstrate the ability to compensate

third parties for injuries. These provisions clearly articulate an intent to ensure that those injured by the release of petroleum are compensated for those injuries. The statutes explicitly include liabilities to third parties who, as here, have suffered bodily injury and property damage as among the injuries LUST is intended to indemnify.

Illinois lawmakers declined to rely on remedies available under existing law, which may at times leave injured parties without recourse. Instead, they codified a means of ensuring that those injured by leaking USTs would be financially compensated. The goal of LUST and related statutes and regulations is to provide the broadest and most comprehensive means of ensuring the availability of remedies to those damaged by the discharge of petroleum into the environment. Plaintiff suffered bodily injuries and property damage "as a result of a release of petroleum from an underground storage tank." She is therefore "a member of the class for whose benefit the statute was enacted" and satisfies the first part of the *Fisher* test.

B. Plaintiff's Injury is One the Statute was Designed to Prevent

As noted above, "bodily injury or property damage suffered as a result of a release of petroleum from an underground storage tank" are among the injuries the statutory scheme is explicitly designed to prevent. 415 ILCS 5/57.2. More specifically, as the appellate court acknowledged, the statutory scheme is "designed to not only protect the environment, but also to protect people and property from fire or explosion that could result from gasoline stored in or

released from an underground storage tank." Modified Decision, ¶23. Plaintiff suffered both bodily injury and damage to her property as a direct result of the release of petroleum from the subject UST at Gas Station #7445. She therefore satisfies the second part of the *Fisher* test.

C. A Private Right of Action is Consistent with the Underlying Purpose of the Statute

The purpose of the Environmental Protection Act is to protect the health of the citizens of the State of Illinois. *People ex. rel. Madigan v. Excavating & Lowboy Service*, 388 Ill. App. 3d 554, 562, (1st Dist. 2009); See also, 415 ILCS 5/2. Furthermore, the Act seeks to "assure that adverse effects upon the environment are fully considered and borne by those who cause them." 415 ILCS 5/2(b). The Act accomplishes these purposes by ensuring that petroleum products are stored safely in underground storage tanks. The mechanisms by which this goal is accomplished are twofold. The Act first imposes a regulatory and inspection regime on UST owners and operators. Second, the Act encourages compliance with the regulatory regime through the imposition of liability for both remedial measures and injuries to both the environment and to the persons or property of third parties injured by a leaking UST.

A private right of action is consistent with the purposes of the statutory scheme. Obviously, the release of nearly 10,000 gallons of petroleum into the environment is the type of occurrence the Act is aimed at preventing, but the goal of ensuring that the adverse effects of such a release are "fully considered and borne by those who cause them" is an equally important goal of the Act.

LUST's various provisions relating to compensation for third parties who suffer injuries resulting from such a release makes clear that damage to the environment is not the only harm that the Act seeks to address, but injuries to third-parties resulting from such damage as well. A private right of action directly furthers the Act's stated purposes and therefore satisfies the third part of the *Fisher* test.

D. A Private Right of Action is Necessary to Provide an Adequate Remedy for Violations of the Statute

The appellate court's affirmation of the dismissal of Rice's complaint is wholly based upon its conclusion that Rice failed to satisfy the fourth part of the *Fisher* test — whether "a private right of action is necessary to provide an adequate remedy for violations of the statute." *Fisher* at 460. The appellate court accepted that Rice satisfies the first three *Fisher* requirements, holding that the statutory scheme is "designed to not only protect the environment, but also to protect people and property from fire or explosion that could result from gasoline stored in or released from an underground storage tank." Modified Decision, ¶23. However, the appellate court found that a private right of action is unnecessary because a common law negligence claim and/or governmental enforcement actions provide an adequate remedy for violations of the law. Modified Order, ¶¶11, 25.

This application of the fourth *Fisher* factor is in error for two reasons. First, the statutory scheme imposes strict liability on UST owners and operators. As outlined below, where a statute imposes strict liability, the

availability of a common law action cannot provide an adequate remedy because the legislature has already determined that common law remedies are inadequate. Second, the text of the IEPA makes clear that the legislature itself did not consider governmental enforcement to be adequate to achieve the stated purposes of the Act. The appellate court's finding to the contrary violates this Court's longstanding command that "in interpreting a statute, the primary rule, to which all other rules are subordinate, is to ascertain and give effect to the true intent and meaning of the legislature." *In re Illinois Bell Switching*, 161 Ill.2d 233, 246 (1994).

1. Common law remedies cannot adequately achieve the purposes of a strict liability statute.

Where a statute is enacted "for the purpose of protecting a certain class of persons against their own inability to protect themselves, . . . Illinois courts will impose absolute liability for a violation that causes injury to a member of that protected class." *Magna Trust Company v. Illinois Central Railroad*, 313 Ill. App. 3d 375, 384 (5th Dist. 2000), citing *Boyer v. Atchison, Topeka Santa Fe Ry. Co.*, 38 Ill.2d 31, 36-37 (1967). The legislature may be presumed to have understood this rule of law when it enacted the IEPA. *Magna*, 313 Ill. App. 3d at 382.

In light of this principle, this Court has long recognized that violations of the Act are *malum prohibitum*. *People v. Fiorini*, 143 Ill. 2d 318, 335 (1991). "Willfulness and intent are not elements of a cause of action under the Act." *Id.*, 143 Ill. 2d at 345-346. No proof of guilty knowledge, or *mens rea*, is

necessary for finding a violation of the Act. Rather, "the analysis applied by courts in Illinois for determining whether an alleged polluter has violated the Act is whether the alleged polluter exercised sufficient control over the source of the pollution." *Id*, 143 Ill. 2d at 355. A plaintiff must show only that "the alleged polluter had the capability of controlling the pollution or at least had control of the premises where the pollution occurred." *People ex rel. Madigan v. Lincoln, Ltd.*, 2016 IL App (1st) 143487, P. 24. "[K]nowledge, awareness, or intent are not elements of a violation of the Act." *Id.*

Rice obviously could not have exercised control over the defendants' USTs. Nor could she be aware of the deficiencies of the USTs or the dangerous conditions caused by the release of petroleum from the subject UST. Nor could she take any action to protect herself from the harms caused by that release. Rice was injured while doing laundry when the spark from her clothes dryer ignited gasoline that had travelled 1.4 miles from Defendants' UST to Rice's home. C 26329, C 26330, C 18927, C 26309. Rice's inability to protect herself from dangers posed by Defendants' actions or inactions is precisely the type of hazardous situation strict liability is designed to protect against.

Although it is possible to do so, this Court need not infer the legislature's intent to impose strict liability on UST owners and operators. The statutes governing USTs do so explicitly. Illinois, through the IEPA, has adopted the liability standards of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"). *People v. N.L.*

Industries, 152 Ill. 2d 82, 92 (1992) ("In December 1983, Illinois amended the Act to reflect the changes in environmental regulation made by CERCLA.") "CERCLA is a strict liability statute. Liability is imposed when a party is found to have a statutorily defined 'connection' with the facility; that connection makes the party responsible regardless of causation." *U.S. v. Capital Tax Corp.*, 545 F.3d 525, 530 (7th Cir. 2008). "The liability under [CERCLA] is strict liability and joint and several liability; innocence of the defendant is irrelevant." *City of Gary, Indiana v. Shafer*, 683 F. Supp. 2d 836, 852 (N.D. Ind. 2010).

In enacting CERCLA, "Congress intended that those responsible for problems caused by the disposal of chemical poisons bear the costs and responsibility for remedying the harmful conditions they created.'" *People v. N.L. Industries*, 152 Ill. 2d at 92. To reinforce this purpose, LUST also explicitly adopts a strict liability standard. According to Section 5/57 12(g), "the standard of liability under this Section is the standard of liability under Section 22.2(f) of this Act." 415 ILCS 5/57 12(g). Section 22.2(f) is a strict liability statute. *Central Illinois Light Company v. Home Insurance Company*, 213 Ill. 2d 141, 173, 177, (2004) (Under 415 ILCS 5/22.2(f)(1) a former owner or operator will be held strictly liable for the release, or threat of release, of all hazardous substances). *Accord, Northern Illinois Gas Company v. Home Insurance Company*, 334 Ill. App. 3d 38, 48-49, (1st Dist. 2002).

The legislature further confirmed its intent to impose strict liability in

claims involving USTs by excluding such claims from proportionate share and several liability provisions applicable to other types of actions. Under 735 ILCS 5/2-1117, a defendant who is found to be less than 25% at fault is only severally liable for damages. However, Section 2-1118 creates an exception that imposes joint and several liability to all defendants, regardless of the degree of fault, where "the injury or damage for which recovery is sought was caused by an act involving the discharge into the environment of any pollutant." 735 ILCS 5/2-1118. Similarly, Title XVII of the IEPA establishes a proportionate liability scheme for site remediation but exempts from that scheme sites "subject to federal or State underground storage tank laws." 415 ILCS5/58.1(a)(2)(iii). These exemptions reflect the legislature's recognition that pollutants released into the environment from USTs pose a heightened risk, as well as the legislature's desire to ensure that those injured by such releases are fully compensated for injuries caused by such releases.

Where a statute imposes strict liability, "all that is necessary for a plaintiff to base his cause of action on a breach of this statute is that it appear that he was within the class of persons the statute intended to protect and that the injury was the type of risk covered." *Boyer v. A.T. S.F. Ry. Co.*, 38 Ill. 2d 31, 36-37 (1967). Applying *Boyer*, the court in *Magna Trust Company v. Illinois Central Railroad* held that because the Safety Appliance Act imposed strict liability, a plaintiff "may bring an independent cause of action when a

defendant's violation of the act causes injury." *Magna Trust Company v. Illinois Central Railroad*, 313 Ill. App. 3d 375, 384 (5th Dist. 2000).

The appellate court's holding that the statutory scheme is "designed to not only protect the environment, but also to protect people and property from fire or explosion that could result from gasoline stored in or released from an underground storage tank" is sufficient to allow Rice to bring a strict liability claim under the test articulated in *Boyer*. Modified Decision, ¶23. However, the appellate court applied the *Fisher* test and determined that Rice failed to satisfy the fourth *Fisher* factor because "Rice can maintain a common law negligence claim against the Speedway defendants based on the same acts and omissions that she alleges violated applicable OSFM regulations related to underground storage tanks." Modified Decision, ¶23.

The appellate court relied on *Abbasi v. Paraskevoulakos*, 187 Ill. 2d 386 (1999) in holding that a private right of action is not necessary to effectuate the Act's purpose. However, central to *Abbasi*'s holding was the fact that the statute did not impose strict liability on violators, but rather provided that a violation "constitutes *prima facie* evidence of negligence." *Abbasi*, 187 Ill. 2d at 395. The *Abbasi* Court declined to find an implied private right of action because "such an interpretation of the Act would render a private cause of action thereunder one for strict liability," which the Court defined as "liability that is imposed on an actor apart from * * * a breach of a duty to exercise reasonable care, i.e., actionable negligence." *Abbasi*, 187 Ill. 2d at 394.

Where, as here, a statute imposes strict liability on violators, the reasoning of *Abbasi* cannot apply. In *Abbasi*, the elements of a cause of action under the statute would precisely mirror those of a common law negligence action. Under either theory of recovery, a plaintiff would be required to prove the traditional elements of a negligence claim and the traditional defenses to such a claim would be available to the defendant.

In contrast, a common law negligence action is not an adequate substitute for a strict liability claim. Strict liability imposes liability regardless of fault and not subject to common law defenses. For example, in holding that the Safety Appliance Act permits a plaintiff to "bring an independent cause of action when a defendant's violation of the act causes injury," the *Magna Trust* court adopted the reasoning of the United States Supreme Court in *O'Donnell v. Elgin, Joliet Eastern Ry. Co.*, 338 U.S. 384 (1949):

> Determining that Congress intended to impose absolute liability for a violation of the act, the United States Supreme Court "swept all issues of negligence out of cases under the Safety Appliance Act." The Court declared that a violation of the act is itself an actionable wrong and is in no way dependent upon negligence. The duty is absolute and the railroad is not excused by showing proof of due care.

Magna Trust Company v. Illinois Central Railroad, 313 Ill. App. 3d 375, 383-84 (5th Dist. 2000). This reasoning recognizes that strict liability and negligence are fundamentally distinct causes of action and that the existence or absence of evidence of negligence is immaterial to a strict liability claim.

The appellate court's holding turns this reasoning on its head. Rather than "[sweeping] all issues of negligence out of cases under the" Act, the

appellate court bars Rice from bringing her strict liability claims because she also alleges conduct that, if proven, could subject Defendants to liability in negligence. The appellate court's holding assumes that Rice would prevail on her negligence claims and that such claims are therefore an adequate substitute for her strict liability claims. However, while it is possible that Rice *could* prevail in a common law negligence action, it is also possible that defendants could prove that they exercised due care and escape liability for Rice's injuries. This is precisely the result a strict liability statute is intended to prevent. "Due care is not a defense in a strict liability action. The duty is absolute and [a defendant] is not excused by showing proof of due care." *Magna Trust, supra,* 313 Ill. App. 3d at 383-84. Under a strict liability standard, Rice is not required to prove most of the allegations of her negligence claims, nor should she be required to do so.

By enacting liability and enforcement provisions that go beyond those available in a common law action, the legislature articulated its desire to impose a higher standard of accountability on UST owners and operators than that imposed under the common law. While in some cases a defendant might violate a strict liability statute *and* act negligently while doing so, that negligence cannot serve to shield the defendant from strict liability. Nor can it bar a plaintiff from bringing her strict liability claim and instead require her to prove a defendant's negligence. Such a rule would consistently impose strict liability on only those defendants who exercised due care, while allowing

negligent defendants to defend against claims that would otherwise subject them to strict liability. This is obviously not consistent with the goals of a strict liability statute.

This Court has not determined whether courts should apply the *Fisher* test to strict liability statutes or whether the *Boyer* test remains the proper framework for determining if a plaintiff may bring an action under a strict liability statute. If *Boyer* remains the proper test, Rice has satisfied that test. If *Fisher* is to be applied in the context of strict liability statutes, the availability of a common law claim that demands additional proof and affords additional defenses to a defendant cannot serve as the basis for denying a plaintiff the right to bring an action in strict liability. Where the legislature has determined that a defendant should be subject to strict liability, a common law negligence claim is insufficient is effectuate the legislature's intent and provide an adequate remedy.

The Act creates an independent strict liability cause of action that does not conform to common law standards of culpability. A common law negligence claim therefore cannot hold UST owners and operators to the standards of liability that the legislature intended. A private right of action under the Act is necessary to effectuate the intent of the statute and provide an adequate remedy, and therefore satisfies the fourth *Fisher* factor.

2. The IEPA explicitly rejects the adequacy of governmental enforcement to remedy violations of the Act.

In addition to holding that a common law negligence action was

sufficient to achieve the Act's purpose, the appellate court held that

> a private right of action is unnecessary to provide an adequate remedy for violations since the Attorney General and State's Attorney may bring actions to obtain remedies, including civil penalties, pursuant to the EPA.

Modified Decision, ¶25. This holding is contrary to the IEPA's text. While governmental enforcement can certainly play an important role in enforcing the Act, the legislature clearly considered such enforcement to be insufficient to fully realize the Act's aims, and said so explicitly:

> [I]n order to alleviate the burden on enforcement agencies, to assure that all interests are given a full hearing, and to increase public participation in the task of protecting the environment, private as well as governmental remedies must be provided.

415 ILCS 5/2(v). This language, if not an explicit authorization of private actions, is an unambiguous rejection of the idea that governmental actions are adequate to enforce the Act. The legislature did not want enforcement left to enforcement agencies. It wanted to engage the public as partners in protecting the environment through private enforcement actions and to maximize the reach and effectiveness of the Act. The availability of government enforcement does not fulfil the maximalist aims articulated in the statute.

The appellate court's reasoning in this case directly contradicts the text of the statute. While the Act explicitly states that government enforcement is inadequate and must be supplemented with private remedies, the appellate court holds that the availability of government enforcement action suggests that private remedies are unnecessary. If the courts are to "ascertain and give

effect to the true intent and meaning of the legislature," *In re Illinois Bell Switching, supra,* 161 Ill.2d at 246, the appellate court's conclusion must give way to the clearly-articulated judgment of the legislature.

E. Nothing in the Statutory Scheme Indicates That the Remedies Articulated Therein are the Exclusive Remedies Available

In addition to the four factors outlined in *Fisher*, some Illinois courts have considered a fifth factor is determining whether a private cause of action is implied in a statute: whether there are indications that the remedies articulated in the statute are the only remedies available. See *NBD Bank v. Krueger Ringier, Inc.*, 292 Ill. App. 3d 691, 697 (1st Dist. 1997). The absence of such indications has been held to weigh in favor of a finding that a private right of action is implied. Plaintiff satisfies this factor as well.

Nothing in the statutory scheme indicates that the remedies articulated in the statutes are the only remedies available. Numerous contrary indications in fact appear throughout the statute. For example, 415 ILCS 22.2(f) imposes liability, "for all costs of investigation, preventive action, corrective action and enforcement action incurred by the State of Illinois resulting from an underground storage tank." However, that Section notes that "Nothing in this Section shall affect or modify in any way the obligations or liability of any person under any other provision of this Act or State or federal law, including common law, for damages, injury or loss resulting from a release or substantial threat of a release as described above." LUST contains an identical provision. 415 ILCS 5/57.12(a)(1).

While the State of Illinois may bring an enforcement action, the Act contemplates additional enforcement actions, both in common law and under the provisions of the Act. This provision is in keeping with the Act's intent that state enforcement be "supplemented by private remedies." 415 ILCS 5/2(b). Furthermore, as discussed above, the financial requirements and indemnification provisions anticipate that releases of petroleum will result in judgments or settlements between injured parties and UST owners and operators, and they seek to ensure the availability of funds to satisfy such judgments and settlement. These and other provisions clearly assume the availability of additional remedies to further the goals of the statutory scheme.

F. A Private Cause of Action Furthers Public Policy

"The public policy underlying certain statutes demands implication of a private remedy to compensate an aggrieved individual belonging to that class of persons whom the statute was designed to protect. . . . Consideration of the underlying policy of the legislation and the overriding purpose of each Act is important in determining whether a private right of action exists absent specific statutory authority." *Sawyer Realty Group, Inc. v. Jarvis Corp.*, 89 Ill. 2d 379, 386-387 (1982).

"An act's preamble has long been recognized as one of the quintessential sources of legislative intent." *Atkins v. Deere & Co.*, 177 Ill 2d 222, 232 (1997). The preamble to the Illinois Environmental Protection Act states:

> It is the purpose of this Act, as more specifically described in later sections, 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.

415 ILCS 5/2(b). It also requires that, "private as well as governmental remedies must be provided" for violations of the Act. 415 ILCS 5/2(a)(v). The preamble further directs that it "shall be liberally construed so as to effectuate the purposes of this Act." 415 ILCS 5/2(c).

It is difficult to imagine a statutory scheme that more strongly implies the availability of a private right of action than those governing petroleum underground storage tanks. The Act imposes strict liability for petroleum releases, requires owners and operators to demonstrate an ability to compensate third parties for bodily injury and property damage resulting from such releases, and indemnifies owners and operators for judgments and settlements paid to third parties for bodily injury and property damage resulting from such releases. The legislature's unambiguous intent in enacting this scheme is to both prevent releases of petroleum into the environment and to ensure that those injured by such releases are compensated. A private right of action not only furthers these goals but is in some cases the only means available "to assure that adverse effects upon the environment are fully considered and borne by those who cause them." 415 ILCS 5/2(b). The lower court erred in finding that no such action is implied under the statutory scheme.

IV. PLAINTIFF HAS PLEADED FACTS SUFFICIENT TO STATE A CAUSE OF ACTION UNDER THE ACT

When ruling on a motion to dismiss under Section 2-615 or Section 2-619, "a court must accept as true all well-pleaded facts, as well as any reasonable inferences that may arise from them." *Patrick Eng'g, Inc. v. City of Naperville*, 2012 IL 113148, P. 31. A court must also "interpret all pleadings and supporting documents in the light most favorable to the nonmoving party." *In re Parentage of M.J*, 203 Ill. 2d 526, 533 (Ill. 2003).

"Generally, where a statute describes a requirement for a pleading, the pleader need allege and prove only what the statute requires to obtain the authorized relief." *People ex. rel. Hartigan v. All American Aluminum and Construction Company*, 171 Ill. App. 3d 27, 34, (1st Dist. 1988). In the case at bar, the strict liability standard applicable to UST petroleum releases and LUST's recognition of "bodily injury" as a compensable injury under the Act provide the necessary elements of a cause of action for bodily injury pursuant to LUST. Plaintiff need only allege that a defendant was the owner or operator of the UST, that petroleum was released from the UST, and that the release caused Plaintiff's injuries.

Plaintiff sufficiently alleges each of these facts in paragraphs 197, 198, and 199 of her First Amended Complaint:

> 197. On October 20, 2017, defendant MPC was the owner, and/or operator, pursuant to LUST, of the UST's at Gas Station #7445.
>
> 198. During October, 2017, there was a release, pursuant to LUST, of petroleum from a UST at Gas Station #7445.
>
> 199. As a result of the release of petroleum from defendants UST located at Gas Station #7445, plaintiff, pursuant to LUST, on

> October 20, 2017, suffered bodily injury and burns from the explosion at her residence caused by the release."

C 26337. Once these three elements are proven, by a preponderance of the evidence, defendants are strictly liable for all damages available under the Act.

V. PUNITIVE DAMAGES ARE AVAILABLE UNDER THE ACT

If this Court holds that Plaintiff may bring a cause of action under the Act, it should also determine whether Plaintiff is entitled to seek punitive damages should she prove her statutory claims. The trial court did not reach this issue because the dismissal of Plaintiff's statutory claims rendered her punitive damages claims moot. However, pursuant to Supreme Court Rule 366, this Court may decide a question of law for the first time on appeal. *Gatto v. Walgreen Drug Co.*, 61 Ill. 2d 513, 520 (Ill. 1975) ("In many instances this court, acting under Rule 366, has decided issues that had not been presented to or decided by the court whose decision is being reviewed.") Judicial economy favors the resolution of this question by this Court.

A. Punishment and Deterrence are Legitimate Factors When Determining Damages Resulting from Violations of the Act

Federal and Illinois courts have long recognized that punishment and deterrence are legitimate considerations when assessing penalties for violations of federal and Illinois environmental protection laws. In *Tull v. United States*, 481 US 412 (1987), the United States Supreme Court discussed the civil penalties available under the Clean Water Act provisions of the Federal Environmental Protection Act. The Court noted that "the legislative

history of the Act reveals that Congress wanted the district court to consider the need for retribution and deterrence, in addition to restitution, when it imposed civil penalties." *Tull,* 481 U.S. at 421. The *Tull* Court explained that

> the more important characteristic of the remedy of civil penalties is that it exacts punishment - a kind of remedy available only in courts of law. Thus, the remedy of civil penalties is similar to the remedy of punitive damages, another legal remedy that is not a fixed fine.

481 U.S. at 421 (footnote 7). Based upon these considerations, the *Tull* Court held that

> A court can require retribution for wrongful conduct based on the seriousness of the violations, the number of prior violations, and the lack of good faith efforts to comply with the relevant requirements. It may also seek to deter future violations by basing the penalty on its economic impact. Subsection 1319(d)'s authorization of punishment to further retribution and deterrence clearly evidences that this subsection reflects more than a concern to provide equitable relief.

Tull v. United States, 481 US at 422, 423 (1987).

In *Friends of the Earth v. Laidlaw Environmental Services, Inc.*, 528 U.S. 167 (2000), the Supreme Court held that a private plaintiff could be awarded civil penalties under the federal Act based *solely* on the punitive factor of deterrence. *Id.*, 528 U.S. at 193. Friends of the Earth, an environmental group, brought a citizen suit against Laidlaw for allegedly violating the mercury discharge limits set by their Clean Water Act permit. *Id.*, 528 U.S. at 176, 177. After the suit was filed, Laidlaw destroyed the violating plant, paid a $100,000 civil penalty to the government, and then filed a motion to dismiss the plaintiff's case for lack of standing and mootness. *Id.* 528 U.S. at 179. The Supreme Court rejected Laidlaw's motion, ruling that a

citizen enforcement action is not rendered moot by the defendant's cessation of pollution because Laidlaw had not met its burden of proving there was no possibility of a future violation. *Id.*, 528 U.S. at 174, 193. "To the extent that civil penalties encourage defendants to discontinue current violations and deter them from committing future ones, they afford redress to citizen plaintiffs who are injured or threatened with injury as a consequence of ongoing unlawful conduct." *Id,* 528 U.S. at 186.

In *City of Evanston v. Texaco, Inc.*, 19 F. Supp. 3d 817 (N.D. Ill. 2014), plaintiffs brought a citizen action under RCRA due to a leaking UST at a gas station. The Court ruled that it is proper in a RCRA citizen suit to initially plead punitive damages as part of the cause of action. "Congress made clear that such civil penalties may be awarded not only in enforcement suits brought by the EPA Administrator, but also in citizen suits." *Id.*, 19 F. Supp. 3d at 823. Following the holding in *U.S. Department of Energy v. Ohio*, 503 U.S. 607 (1992), the *Evanston* Court noted, "it is significant that the Court recognized that the RCRA and CWA citizen suit sections' incorporation of their respective statute civil penalty sections will have the effect of authorizing punitive fines when a polluter other than the United States is brought to a court by a citizen." *Id.*, 19 F. Supp. 3d at 824.

Under Illinois law, "punitive considerations" have likewise been part of the Act's overall penalty scheme. *People v. Fiorini*, 143 Ill. 2d 318, 349, (1991). Such penalties serve the purposes of the Act by deterring future violations and

encouraging compliance with the Act and cooperation with state authorities. "The assessment of penalties against recalcitrant defendants, who have not sought to comply with the Act voluntarily but who by their activities forced the Agency or private citizen to bring action against them, may cause other violators to act promptly and not wait for the prodding of the Agency." *Lloyd A. Fry Roofing Company v. Pollution Control Board*, 46 Ill. App. 3d 412, 418-419 (1st Dist. 1977).

While some early decisions regarded punitive considerations as "secondary" concerns of the Act, later courts have recognized the more prominent role that punitive damages play in furthering the Act's aims. As noted in *ESG Watts v. Pollution Control Board*,

> Illinois Courts often state that the primary purpose of civil penalties is to aid in enforcement of the Act, and punitive considerations are secondary. Some decisions which predate Section 42(h) seem to suggest that whenever compliance has been achieved, punishment is unnecessary. However, it is now clear from the Section 42(h) factors that the deterrent effect of penalties on the violator and potential violators is a legitimate goal for the Board to consider when imposing penalties.

ESG Watts v. Pollution Control Board, 282 Ill. App 3d 43, 52 (4th Dist. 1996) (internal citations omitted.)

To this end, 415 ILCS 5/42(h) lists a number of factors to be considered "in mitigation or aggravation of penalty" when determining the appropriate sanction for violations of the Act:

(1) the duration and gravity of the violation;

(2) the presence or absence of due diligence on the part of the defendant in attempting to comply with requirements of this Act and the regulations thereunder or to secure relief therefrom as provided by this Act;

(3) any economic benefits accrued by defendant because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;

(4) the amount of monetary penalty which will serve to deter further violations by the defendant and to otherwise aid in enhancing voluntary compliance with this Act by the defendant and other persons similarly subject to the Act;

(5) the number, proximity in time, and gravity of previously adjudicated violations of this Act by the defendant;

(6) whether the defendant voluntarily self-disclosed, in accordance with subsection (i) of this Section, the noncompliance to the Agency;

(7) whether the defendant has agreed to undertake a "supplemental environmental project", which means an environmentally beneficial project that a defendant agrees to undertake in settlement of an enforcement action brought under this Act, but which the defendant is not otherwise legally required to perform; and

(8) whether a defendant has successfully completed a Compliance Commitment Agreement under subsection (a) of Section 31 of this Act to remedy the violations that are the subject of the complaint.

415 ILCS 5/42(h). The Act explicitly states that "The penalties provided for in this Section may be recovered in a civil action." 415 ILCS 5/42(d).

The factors articulated in Section 42(h) mirror those articulated in *Tull v. United States, supra,* 481 U.S. 412, 423, and other cases that discuss the availability of punitive damages in environmental actions. The Illinois legislature has adopted these factors as part of Illinois statutory law. Section 42(h), in particular Section 42(h)(4) ("the amount of monetary penalty which

will serve to deter further violations,") also mimics the purpose of punitive damages in a common law action. In enacting Section 42(h), the legislature therefore expressly authorized the imposition of punitive damages for violations of the Act. If a private right of action is available under the Act, the penalty factors articulated in Section 42(h) apply as well. Nothing in the Act suggests that the Section 42(h) factors should be limited to enforcement actions brought by governmental agencies. Section 42(h)'s goals of punishment and deterrence are no less applicable to private actions in assessing damages. The 42(h) factors apply equally to both types of claims.

B. The Section 42(h) Factors are Not Discretionary

When determining a proper penalty for violations of the Act, the Act does not require a preliminary showing that a defendant's conduct was willful or egregious before the Section 42(h) factors may be considered. These factors are to be considered in every assessment of the proper penalty to be imposed for a violation of the Act. The trial court therefore must permit a jury to consider these factors in assessing damages. The jury need not necessarily enhance or reduce the damages imposed based on these factors, but the trial court does not possess the discretion to limit which factors may be considered.

Although Illinois courts have not addressed this precise issue, several courts have ruled on the analogous issue of whether a trial court has discretion to deny a request for an injunction when injunctive relief is specifically permitted under a regulatory statute. In *Environmental Protection Agency v.*

Fitz/Mar, Inc., 178 Ill. App. 3d 555 (1st Dist. 1988), the defendant, a landfill operator, sought review of an order granting the IEPA's motion for a preliminary injunction that prohibited the defendant from dumping refuse in violation of the Act. The *Fitz/Mar* defendant argued that the trial court had abused its discretion by enjoining defendant from operating its business for a "technical" violation of the Act because the remedy was disproportionate to the alleged violation.

The *Fitz/Mar* court upheld the trial court's ruling, noting that the trial court had no discretion to exercise when interpreting Section 5/42(e) of the Act:

> Under this section, a claim for injunctive relief is not governed by general equitable principals or the rules of common law nuisance. When, as here, the statute authorizes such an action, Plaintiffs need only show defendant's violation of the Act, and that Plaintiffs have standing to pursue the cause. No discretion is vested in the Circuit Court to refuse to issue an injunction to enforce the statute's terms.

Fitz/Mar 178 Ill. App. 3d at 560. The Court in *People v. Staunton Landfill, Inc.* 245 Ill. App. 3d 757, 768 (4th Dist. 1993) reached the same conclusion, holding that where a statute expressly authorizes injunctive relief, "common law requirements for the issuance of equitable relief are suspended because the legislature has already determined, in passing the applicable statute, that violations of the statute cause irreparable injury for which no adequate remedy exists."

Similarly, in passing the Act's penalty provisions, the legislature has determined that each of the Act's Section 42(h) factors are to be considered in

determining a proper penalty for violations of the Act. Once a violation is proven, the trial court lacks the authority to allow or disallow consideration of any of the factors listed in Section 42(h), including those related to punitive considerations and future deterrence. The jury must be permitted to consider them without requiring any additional showing by Plaintiff. Plaintiff's Motion for Punitive Damages by Operation of Law should be granted *instanter* upon remand, as the factors articulated in Section 42(h) are an essential and integral part of the Act.

C. The Availability of Punitive Damages Survives Plaintiff's Death

Although common law punitive damage claims generally abate upon the death of the injured party, claims for punitive damages based on a regulatory statute do not.

> [W]here the legislature specifically provides for recovery of exemplary damages as part of a comprehensive regulatory scheme, the intention of the legislature is that a claim for a punitive award should be litigated regardless of whether the injured person continues to live. That claim is an integral component of the regulatory scheme and of the remedies that are available under it.

Froud v. Celotex, Corp., 98 Ill.2d 324, 332 (1983). See also *National Bank of Bloomington v. Norfolk & Western Railway Co.*, 73 Ill. 2d 160, 173-74, (1978) (permitting punitive damages under the Public Utility Act.)

The facts of this case, as alleged, perfectly illustrate the reasoning underlying the *Froud* holding. Defendants knowingly and unlawfully stored nearly 10,000 gallons of petroleum in an underground storage tank they knew to be defective, after the OSFM had ordered the tank to be emptied, and after

they told OSFM that the tank had been taken out of service. Upon discovering that the tank had again begun to fill with water and had already released at least 1,000 gallons of gasoline into the environment, defendants failed to drain the tank, failed to notify state authorities of the release (which would have alerted OSFM to the unlawful storage) and failed to take any actions to prevent further releases. Instead, defendants allowed an additional 9,000 gallons of gasoline to be released into the environment. Defendants then knowingly allowed that petroleum to spread more than 7 miles from the site of the release without informing state authorities of the release, creating the conditions that directly led to Plaintiff's injuries, as well as numerous other fires and explosions in the surrounding area. The OSFM determined that defendants' violations of LUST were "willful" in nature. C 20935-36.

The factors listed in Section 42(h) are an "integral component of the regulatory scheme," designed, "to deter further violations by the defendant and to otherwise aid in enhancing voluntary compliance with this Act by the defendant and other persons similarly subject to the Act." 415 ILCS 5/42(h)(4). Disallowing the possibility of punitive damages in this case would permit defendants to escape the full liability contemplated by the statute and severely undermine the goals of the regulatory scheme. Therefore, Plaintiff's claim for punitive damages did not abate upon her death. If this Court holds that Plaintiff is entitled to proceed on her statutory claims against Defendants, it

should remand this matter to the trial court with instructions permitting Plaintiff to seek damages pursuant to the factors listed in Section 42(h).

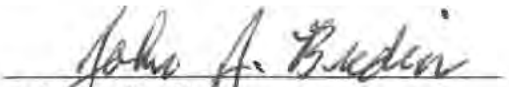
CONCLUSION

Viewed as a whole, the statutory scheme governing underground storage tanks reveals a broad and comprehensive attempt to achieve four simultaneous goals: first, to ensure that petroleum is not released into the environment; second, to ensure that UST owners and operators are held strictly liable for damages caused by any release; third, to ensure that those injured by any release are fully and fairly compensated for those injuries and, fourth, to deter future violations through the assessment of penalties against UST owners and operators. The entire statutory design – its regulatory requirements, financial responsibility requirements, recovery fund, indemnification provisions, strict liability standard, and penalty factors – reflects and furthers these goals. Given the enormous potential for harm posed by the release of petroleum into the environment, it is not surprising that the legislature would seek to maximally deter such events and to minimize risks to the public. The availability of a private right of action – express or implied – under the statutes governing USTs is perfectly in keeping with the intent of the legislature in designing the overall legislative scheme and is necessary to fully realize the legislative goals articulated in the statute.

For the reasons stated herein, Plaintiff asks this Court to reverse the dismissal of Counts I, II and III of her First Amended Complaint, to hold that

Plaintiff is entitled to seek punitive damages should she prove that Defendants are liable for her injuries, to remand this matter to the circuit court with instructions consistent with the Court's decision, and for any further relief the Court deems just and proper.

Respectfully submitted,



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RULE 341(C) CERTIFICATE OF COMPLIANCE

Pursuant to Supreme Court Rule 341(c), I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 14,633 words.

John J. Budin (ARDC # 6190387)
Counsel for Plaintiff-Appellant

No. 129628

IN THE SUPREME COURT OF ILLINOIS

LAURA RICE, as Special Representative of the Estate of MARGARET L. RICE, Deceased,	)	On appeal from the Appellate Court of Illinois, First District, No. 1-22-0155
Plaintiff-Appellant,	)	There heard on appeal from the Circuit Court of Cook County, Illinois, No. 2018 L 000783
v.	)	
MARATHON PETROLUEM CORPORATION, a Delaware Corporation, SPEEDWAY, LLC., a Delaware Limited Liability Company, and MANOJ VALIATHARA,	)	Honorable James M. Varga, Judge Presiding
Defendants-Appellees.	)	

NOTICE OF ELECTRONIC FILING AND CERTIFICATE OF SERVICE

Please take notice that on October 27, 2023, I electronically filed the BRIEF OF PLAINTIFF-APPELLANT with the Clerk of the Illinois Supreme Court.

The undersigned served this NOTICE OF ELECTRONIC FILING and the BRIEF OF PLAINTIFF-APPELLANT via electronic mail to the individuals named below on October 27, 2023. Under penalties as provided by law pursuant to Section 1-109 of the Civil Code of Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

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No. 129628

IN THE
SUPREME COURT OF ILLINOIS

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Plaintiff-Appellant,	)	
v.	)	There heard on appeal from the Circuit Court of Cook County, Illinois No. 2018 L 000783
MARATHON PETROLUEM CORPORATION, a Delaware Corporation, SPEEDWAY, LLC., a Delaware Limited Liability Company, and MANOJ VALIATHARA,	)	Honorable James M. Varga, Judge Presiding
Defendants-Appellees	)	

SEPARATE APPENDIX TO BRIEF OF PLAINTIFF-APPELLANT

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2022 IL App (1st) 220155-U

No. 1-22-0155

Filed November 23, 2022

Modified upon denial of rehearing March 30, 2023

Fourth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

LAURA E. RICE, as Special Representative of the Estate of MARGARET L. RICE, deceased, Plaintiff-Appellant, v. MARATHON PETROLEUM CORPORATION, SPEEDWAY, LLC, and MANOJ VALIATHARA, Defendants and Third-Party Plaintiffs-Appellees, v. SOUND, INC., ILLINOIS BELL TELEPHONE COMPANY, LLC d/b/a AT&T ILLINOIS, COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC, COMMONWEALTH EDISON COMPANY, DIRECTIONAL CONSTRUCTION SERVICES, INC., FLAGG CREEK WATER RECLAMATION DISTRICT, LAUREN'S RESTORATION, INC., NICOR GAS, and ROBINETTE DEMOLITION, INC., Third-Party Defendants.	)	Appeal from the Circuit Court of Cook County. No. 18 L 0783 Honorable James M. Varga, Judge, Presiding.

JUSTICE MARTIN delivered the judgment of the court.
Presiding Justice Lampkin and Justice Rochford concurred in the judgment.

ORDER

¶ 1 *Held*: Dismissal of counts claiming statutory private right of action affirmed. The Leaking Underground Storage Tank Program does not provide an express private right of action nor is such implied when common law negligence liability and public enforcement provisions make the statute and related regulations effective.

¶ 2 Margaret Rice suffered burns and other injuries when a clothes dryer ignited gasoline vapors emanating from the sewer system into her apartment building. Gasoline was present in the wastewater system because the defendants filled a corroded underground storage tank at a nearby gas station with nearly 10,000 gallons of fuel, allowing groundwater to displace fuel into the environment. Alleging that the defendants caused the explosion, Rice brought a negligence action seeking damages. Rice also alleged that Speedway violated several regulations related to underground storage tanks. For that reason, she asserted that the Leaking Underground Storage Tank Program (LUST) (415 ICS 5/57 *et seq.* (West 2016)), which is part of the Illinois Environmental Protection Act (EPA) (415 ILCS 5/1 *et seq.* (West 2016)), gave her an additional cause of action. Rice claimed that LUST and the EPA enable her to seek remedies above and beyond what she could obtain in a common law negligence action. There is no dispute that Rice had a cognizable negligence claim and, in fact, the parties settled that part of the action, presumably making Rice whole. The question remains as to whether Rice can obtain additional relief pursuant to the EPA—in other words, whether the statute provides a private right of action for violations of laws regulating underground storage tanks. We find that a private right of action does not exist because (1) there is no express provision for such and (2) such an action is not implied when a negligence action and public enforcement mechanisms provide sufficient remedies for violations.

¶ 3 I. BACKGROUND

¶ 4 Rice filed this action against Marathon Petroleum Corporation and its subsidiary, Speedway, LLC, which owns and operates the Speedway gas station where the underground storage tank was located. The station's manager, Manoj Valiathara, was also named as a defendant. Subsequently, Margaret died.[1] In an amended complaint, Margaret's daughter, Laura, was substituted as the plaintiff, in her capacity as special representative of Margaret's estate. Marathon, Speedway, and Valiathara (collectively, the Speedway defendants) filed a third-party complaint against multiple parties whose negligence, they claimed, contributed to Margaret's injuries.[2]

¶ 5 Rice's[3] amended complaint asserted that data from a system that gauges the level and contents of the underground storage tanks situated at a Speedway gas station in Westmont, Illinois, indicated that a nearly 10,000 gallon capacity tank referred to as "113 RUL A NORTH" or "Tank No. 3" contained 9,816 gallons of gasoline as of January 9, 2017. After that date, no gasoline was dispensed from the tank. Beginning October 1, 2017, the system detected water in the tank. Five days later, a system "high water" warning caused Speedway to generate a work order, dispatching maintenance technicians to investigate. On October 9, a maintenance technician verified the system's report that over 10 inches of water was present in the tank. The technician proceeded to pump in excess of 1,000 gallons of a gasoline-water mixture—that was at least 95% water—out of the tank. The next day, a different technician discovered that the tank had refilled with water. Another 1,000 gallons were pumped from the tank—almost entirely water. The following day, the system reported that the water level was above 28 inches. The water level continued to rise, reaching 48 inches by the 14th and 93 inches on the 15th. As the tank's capacity was 97 inches,

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[1]Margaret Rice's cause of death was unrelated to the explosion.
[2]The third-party defendants are not parties to this appeal.
[3]Rice refers to Laura Rice, as Special Representative of the Estate of Margaret Rice.

the readings indicated that the tank had filled almost entirely with water. Thus, water had displaced the 9,816 gallons of stored gasoline into the surrounding environment.

¶ 6 Gasoline migrated into the storm sewer system of Margaret Rice's apartment building in Willowbrook, Illinois, about 1½ miles away from the Speedway gas station. On the morning of October 20, gasoline vapors emanating from the sewer system ignited when Margaret started a clothes dryer. A large explosion blew her from the laundry room into a hallway. She sustained burns and other injuries. Her apartment was damaged as well.

¶ 7 In addition to the explosion that occurred in Margaret's building, the amended complaint stated that at least 10 additional explosions occurred, and many nearby residents were evacuated from their homes. Substantial measures were undertaken to remediate contamination in the surrounding area. Rice claims that the gasoline release from Tank No. 3 was the largest of its kind in United States history.

¶ 8 Rice's amended complaint against the Speedway defendants asserted six counts. Counts I, II, and III (the EPA counts) alleged that each of the Speedway defendants violated several regulations promulgated by the Office of the State Fire Marshall (OSFM). Specifically, Rice alleged that more than a year before the explosion, OSFM issued a "Red Tag" placing Tank No. 3 in temporary closure status upon finding that the tank had "visual corrosion holes" and was "taking on water." Nevertheless, the Speedway defendants filled Tank No. 3 with gasoline, contrary to OSFM regulations that required: (1) the tank to be emptied (41 Ill. Adm. Code 175.810(a)(1), (c)), (2) repairs to prevent release of gasoline (41 Ill. Adm. Code 175.700), and (3) written notification to OSFM that the tank would be put back in operation (41 Ill. Adm. Code 175.810(a)(6), (d)(6)). In addition, the Speedway defendants continued to store gasoline in Tank No. 3 while failing to maintain it in accordance with regulations (41 Ill. Adm. Code 176.410). Further, despite warnings

from the monitoring system that gasoline had been released beginning October 5 and continuing through October 15, the Speedway defendants failed to notify state and local agencies of a possible release or report that an actual release had occurred, as required by regulations (41 Ill. Adm. Code 176.300, 41 Ill. Adm. Code 176.320). Rice further alleged that, following the explosion, the Speedway defendants materially altered information in a report to OSFM, in violation of the EPA (415 ILCS 5/44(h)(3), (4.5) (West 2016)). Lastly, Rice claimed that the Speedway defendants failed to meet the training requirements for their employees related to underground storage tanks (41 Ill. Adm. Code 176.610 through 176.625).

¶ 9 For these alleged violations, Rice asserted that LUST and the EPA provide a private right of action. She sought "all damages and remedies allowed pursuant to the [EPA] and LUST." The EPA counts specifically cite and discuss at length the statutory aggravating and mitigating factors to be considered in determining an appropriate "civil penalty" for EPA violations EPA (415 ILCS 5/42(h)(1)-(8) (West 2016)).

¶ 10 The EPA counts also state that the Illinois Attorney General and DuPage County State's Attorney jointly filed a complaint against Speedway in November 2017 in DuPage County, alleging violations of the EPA based on the release of gasoline from Tank No. 3. A copy of the Attorney General's complaint, which sought both injunctive relief and civil penalties, was attached to Rice's amended complaint.

¶ 11 Separate from the EPA counts, Rice's complaint asserted negligence claims against each of the Speedway defendants (the negligence counts). The negligence counts asserted that the Speedway defendants owed Margaret and the public a duty to maintain their underground storage tanks so as not to present a danger. The Speedway defendants breached their duty, Rice alleged, by (1) storing gasoline in a defective tank, (2) failing to respond to warnings and alarms indicating

a risk of leakage, (3) allowing water to displace gasoline into the sewer system and environment, and (4) failing to report and warn the public about the release of gasoline and the dangers it posed. Rice contended that, as a result of their acts and omissions, the Speedway defendants caused the explosion and fire in which Margaret sustained injuries. The negligence counts sought monetary damages.

¶ 12 The Speedway defendants filed both a motion to dismiss the EPA counts pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2016)) and an answer to the negligence counts.[4] In their motion to dismiss, the Speedway defendants argued that LUST does not provide a private right of action.

¶ 13 In a written order, the circuit court agreed with defendants that LUST provides neither an express nor implied private right of action. The court found no express right in LUST and observed that "against a clear, simple meaning of [']express,[']" Rice "attempts to identify certain words in various locations of the statute, put them together, and then sum up a conclusory argument."

¶ 14 As to an implied private right of action, the court found that Rice was not within the class designed to be protected by LUST nor did she sustain the type of injury that LUST was designed to prevent. Instead, the court believed LUST was designed for the purposes stated in section 57 of LUST (415 ILCS 5/57 (West 2016)), which, among other purposes, provides procedures for remediation of underground storage tank sites contaminated by released petroleum. Additionally, the court stated that it would follow the reasoning of the federal district court in *Chrysler Realty Corp. v. Thomas Industries, Inc.*, 97 F. Supp. 2d 877, 881 (N. D. Ill. 2000). Applying Illinois law, the *Chrysler* court found that LUST does not provide an implied private right of action since the

[4]The Speedway defendants filed a combined section 2-615 and section 2-619 (735 ILCS 5/2-619 (West 2016)) motion as permitted under section 2-619.1 (*id.* § 2.619.1). However, only the matters related to the section 2-615 portion were granted and are relevant in this appeal.

enforcement mechanisms provided in LUST adequately serve its purpose and make LUST effective without a private right of action. For those reasons, the court dismissed the EPA counts.

¶ 15 The court's order included an express finding pursuant to Supreme Court Rule 304(a) (eff. Mar. 8, 2016) that "[t]here is no just reason for delaying either enforcement or appeal." Rice filed a motion to reconsider, which the trial court denied. Rice then filed a timely notice of appeal from the court's dismissal of the EPA counts. Subsequently, Rice and the Speedway defendants reached a settlement on the remaining negligence counts.[5] Their settlement agreement and agreed order to voluntarily dismiss the negligence counts expressly stated that they had only resolved the negligence counts and were continuing to litigate the EPA counts through this appeal.

¶ 16 II. ANALYSIS

¶ 17 In our prior order, we concluded that we lacked jurisdiction over this appeal since the circuit court's order dismissing the EPA counts was not a final order, as the EPA counts and the negligence counts were based on the same operative facts and amounted to the same basic claim. See *Illinois State Bar Ass'n Mutual Insurance Co. v. Canulli*, 2019 IL App (1st) 190141, ¶ 17 (stating that "if a claim based on the same operative facts remains pending when the court issues Rule 304(a) language, then the court has not resolved even a part of the dispute, and the order is nonfinal."). We maintain that the EPA counts and negligence counts are based on the same operative facts but modify our conclusion that they are the same basic claim since the EPA counts seek a separate remedy from the negligence counts. The negligence counts sought compensatory damages while the EPA counts seek "all damages and remedies allowed pursuant to the [EPA] and

[5]We are aware of the settlement since it was at issue and was contained in the record of a separate appeal involving the Speedway defendants' third-party claims for contribution. See *Rice v. Marathon Petroleum Corp.*, 2023 IL App (1st) 210458-U. "We may take judicial notice of the record in another case involving the same party or of public documents contained in the record of any other judicial proceeding if doing so would aid us in deciding the instant appeal." *In re Marcus S.*, 2022 IL App (3d) 170014, ¶ 46, n. 4.

LUST." At first glance, the difference is not obvious. Yet, Rice's briefing indicates that the EPA counts seek punitive damages, which she argues are provided for by statute, and her amended complaint is amenable to that construction. Thus, we find the EPA counts are separate and we address the merits of the appeal.[6]

¶ 18 We review an order granting a section 2-615 motion *de novo*. *Khan v. Fur Keeps Animal Rescue, Inc.*, 2021 IL App (1st) 182694, ¶ 25. We may affirm on any basis appearing in the record regardless of the trial court's reasoning. *Id.* A section 2-615 motion tests the legal sufficiency of a complaint and asserts that it fails to establish a cause of action upon which relief could be granted. *Dent v. Constellation NewEnergy, Inc.*, 2022 IL 126795, ¶ 25. We construe the allegations in the light most favorable to the plaintiff and affirm dismissal only if it is clearly apparent that no set of facts can be proven that would entitle the plaintiff to recovery. *Id.*

¶ 19 On appeal, Rice contends that LUST provides an express private right of action. We disagree. "Express" means "[c]learly and unmistakably communicated; directly stated." Black's Law Dictionary 601 (7th ed. 1999). Rice cites no language that directly states that private parties may bring suit under LUST. Instead, as the circuit court observed, Rice takes words and phrases from multiple provisions out of context to support her position. If the legislature had provided an express private right of action, this would be a simple inquiry. Rice's strained interpretation underscores that a private right of action is not clearly and unmistakably communicated in the statute. Primarily, Rice points to provisions requiring owners and operators of underground storage tanks to maintain insurance to satisfy liability arising out of bodily injury or property damage suffered as a result of petroleum released from such tanks. These provisions do not directly state that private parties may bring an action under LUST. Rather, they simply aim to ensure that parties

[6]Following Rice's petition for rehearing, we permitted an answer and reply in accordance with Supreme Court Rule 367(d) (eff. Nov. 1, 2017).

injured by the release of gasoline from underground storage tanks can obtain compensation pursuant to already cognizable causes of action, such as negligence.

¶ 20 Next, we consider Rice's argument that LUST provides an implied private right of action. In order to find an implied private right of action, a court must find that (1) the plaintiff is a member of the class for whose benefit the statute was enacted, (2) the plaintiff's injury is one the statute was designed to prevent, (3) a private right of action is consistent with the underlying purpose of the statute, and (4) implying a private right of action is necessary to provide an adequate remedy for violations of the statute (the *Fisher* factors). *Fisher v. Lexington Health Care, Inc.*, 188 Ill. 2d 455, 460 (1999). We need not analyze all four factors if we find that a private right of action is not necessary to effectuate the purpose of the statute. *Abassi v. Paraskevoulakos*, 187 Ill. 2d 386, 393 (1999).

¶ 21 We take guidance from our supreme court's decision in *Abassi*. *Id.* In *Abassi*, our supreme court considered whether a private right of action was implied in the Lead Poisoning Prevention Act (410 ILCS 45/1 et seq. (West 1996)). The court concluded that a private right of action was "not necessary to provide an adequate remedy for violation of the Act." *Abassi*, 187 Ill. 2d at 393. A private right of action was not necessary since a common law negligence action was available, and in fact pled, based on violations of the statute. *Id.* at 394 (noting that "a violation of a statute or ordinance designed to protect human life or property is *prima facie* evidence of negligence."). Expanding on the fourth *Fisher* factor of necessity, the court stated that it would only find an implied private right of action when a statute would be ineffective unless a private right of action was recognized. *Id.* at 395. But the availability of a common law negligence action based on a violation of a statute makes a statute effective. *Id.* ("a common law negligence action effectively implements the public policy behind the Act."). Since a plaintiff can bring a negligence action

based on such a violation, "the threat of liability is an efficient method of enforcing the statute." *Id.* Thus, the court found that no "clear need" existed to imply a private right of action. *Id.* at 393 (quoting *Board of Education v. A, C & S, Inc.*, 131 Ill. 2d 428, 471 (1989)). That is, a private right of action was not necessary to uphold and implement the public policy behind the Act. *Id.*

¶ 22 By contrast, this court recently found an implied right of action in the Illinois Insurance Code (215 ILCS 5/1 *et seq.* (West 2020)) for an employee discharged in retaliation for refusing to consent to employer purchased insurance that pays proceeds to the employer in the event of the employee's death. *Cretella v. Azcon, Inc.*, 2022 IL App (1st) 211224. In *Cretella*, a statute expressly prohibited retaliation in such circumstances. *Id.* ¶ 18; 215 ILCS 5/224.1 (West 2020). We found an implied private right of action, in part, because an employee had no other meaningful recourse under the statute, which rendered the prohibition ineffective. *Id.* ¶ 60. Significantly, we found in the same decision that discharge in violation of the statute did not fall within the limited categories that would support a common law claim of retaliatory discharge. *Id.* ¶ 20. Accordingly, a private right of action was necessary to provide an adequate remedy. *Id.* ¶ 63. Indeed, it was the plaintiff's only recourse.

¶ 23 Here, we find that Rice is much more like the plaintiff in *Abassi* than the plaintiff in *Cretella*. Like the plaintiff in *Abassi*, Rice can maintain a common law negligence claim against the Speedway defendants based on the same acts and omissions that she alleges violated applicable OSFM regulations related to underground storage tanks. Indeed, it is difficult to conceive how Rice could establish the Speedway defendants' liability for negligence without pointing to the same acts and omissions that she alleges violated OSFM regulations. The circuit court found that Rice was not within the class LUST was designed to protect nor did she suffer the kind of injury LUST was designed to prevent. However, Rice did not allege that the Speedway defendants

violated LUST *per se*. Rather, she cited to LUST and other sections of the EPA to argue that a private right of action and certain remedies are available. Rice's complaint specifically alleges violations of regulations found in Title 41 of the Illinois Administrative Code, which generally pertains to fire prevention and safety. Several statutes, including LUST, the Gasoline Storage Act (430 ILCS 15/1 *et seq.* (West 2016)), and the Fire Investigation Act (425 ILCS 25 *et seq.* (West 2016)) grant OSFM authority to issue regulations. LUST, by itself, may be primarily aimed at remediation of sites affected by petroleum released from underground storage tanks. The applicable OSFM regulations, however, are designed to not only protect the environment, but also to protect people and property from fire or explosion that could result from gasoline stored in or released from an underground storage tank. Rice alleged that the proximate cause of the explosion that injured her was the release of gasoline from an underground storage tank resulting from violations of OSFM regulations that are designed to prevent such a release. Therefore, Rice could use the Speedway defendants' alleged regulatory violations as *prima facie* evidence to prove the negligence elements of duty and breach of duty. See *Davis v. Marathon Oil* (1970) (violation of a regulation is *prima facie* evidence of negligence); see also Illinois Pattern Jury Instructions, Civil, No. 60.01 (approved Dec. 8, 2011) (providing that a jury may be instructed that an administrative regulation was in force and its violation may be considered in determining whether a party was negligent); and *Bier v. Leanna Lakeside Property Ass'n*, 305 Ill. App. 3d 45, 59 (1999) (a statute, ordinance, or regulation and its violation is evidence of a duty and breach of that duty).

¶ 24 Thus, common law negligence gives effect to OSFM's regulations and implements the public policy behind them. Since the Speedway defendants may be liable to Rice for damages based on their alleged regulatory violations pursuant to common law negligence, a private right of action is unnecessary to provide an adequate remedy for such violations.

¶ 25 We further observe that a private right of action is unnecessary to provide an adequate remedy for violations since the Attorney General and State's Attorney may bring actions to obtain remedies, including civil penalties, pursuant to the EPA. 415 ILCS 5/42(e), (f) (West 2016). Violators are also subject to criminal liability in some circumstances. 415 ILCS 5/44 (West 2016). The provision of sufficient criminal and regulatory penalties diminish the necessity of a private right of action to effectuate a statute's purpose. *Carmichael v. Professional Transportation, Inc.*, 2021 IL App (1st) 201386, ¶ 32. Public enforcement is also noteworthy since, as Rice emphasizes, the gasoline release had consequences beyond her injury. Many people and properties were affected, and several public agencies addressed the situation. The Attorney General and State's Attorneys are better suited to represent such broad interests and we doubt whether Rice has standing to litigate matters beyond her own injury.

¶ 26 Rice argues that a private right of action is necessary to subject violators to the higher standard of strict liability, which is not applicable under common law negligence. We are unpersuaded. Rice fails to cite any authority to support this argument. She further fails to explain why the standard applicable in negligence is insufficient or why strict liability is necessary to make a statute effective or provide an adequate remedy. To the contrary, *Abassi* indicates that liability in negligence is sufficient to accomplish both. *Abassi*, 187 Ill. 2d at 385. We also observe that Rice points to the standard of liability set forth in subsection (g) of section 57.12 of LUST (415 ILCS 5.57.12(g) (West 2016)) to argue that strict liability applies for the violations she alleged. However, section 57.12 relates solely to "costs of investigation, preventive action, corrective action and enforcement action incurred by the State of Illinois." *Id.* § 57.12(a). Moreover, the statute expressly states that it does not affect or modify liability for damages under common law

for injury or loss resulting from a release of gasoline. *Id.* § 57.12(a)(1). In sum, the strict liability contemplated in section 57.12 has no application to claims by private parties.

¶ 27 We are also unpersuaded that the potential of punitive damages necessitates a private right of action. Again, Rice fails to cite any supportive authority or explain her reasoning. She primarily points to the eight aggravating and mitigating factors the EPA provides for the determination of an appropriate civil penalty. 415 ILCS 5/42(h) (West 2016). A plaintiff can seek punitive damages in a negligence action when a defendant "acts willfully, or with such gross negligence as to indicate a wanton disregard of the rights of others." *Kelsay v. Motorola, Inc.*, 74 Ill. 2d 172, 186 (1978). Proving such for the Speedway defendants' release of gasoline would likely involve the same aggravating factors Rice points to in the EPA. Thus, a private right of action is not necessary to impose punitive damages if the facts warrant.

¶ 28 III. CONCLUSION

¶ 29 For these reasons, we find that neither an express nor implied private right of action exists for the regulatory violations Rice alleges. Accordingly, we affirm the circuit court's order dismissing the EPA counts of Rice's amended complaint.

¶ 30 Affirmed.

2022 IL App (1st) 220155-U

No. 1-22-0155

Filed November 23, 2022

Fourth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

LAURA E. RICE, as Special Representative of the Estate of MARGARET L. RICE, deceased, Plaintiff-Appellant, v. MARATHON PETROLEUM CORPORATION, SPEEDWAY, LLC, and MANOJ VALIATHARA, Defendants and Third-Party Plaintiffs-Appellees, v. SOUND, INC., ILLINOIS BELL TELEPHONE COMPANY, LLC d/b/a AT&T ILLINOIS, COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC, COMMONWEALTH EDISON COMPANY, DIRECTIONAL CONSTRUCTION SERVICES, INC., FLAGG CREEK WATER RECLAMATION DISTRICT, LAUREN'S RESTORATION, INC., NICOR GAS, and ROBINETTE DEMOLITION, INC., Third-Party Defendants.	)	Appeal from the Circuit Court of Cook County. No. 18 L 0783 Honorable James M. Varga, Judge, Presiding.

JUSTICE MARTIN delivered the judgment of the court.
Presiding Justice Lampkin and Justice Rochford concurred in the judgment.

ORDER

¶ 1 *Held*: Appeal dismissed for lack of appellate jurisdiction. The trial court's dismissal of counts for personal injury based on violations of the Illinois Environmental Protection Act was not a final, appealable order when negligence counts based on the same operative facts remained pending. Subsequent settlement of the negligence counts did not cure the premature notice of appeal.

¶ 2 Laura Rice, as Special Administrator of the Estate of Margaret Rice, appeals from an order dismissing three counts of her six-count complaint. We dismiss this appeal for lack of jurisdiction upon our finding that the trial court's order was not a final judgment.[1]

¶ 3 Margaret Rice sustained injuries on October 20, 2017, when an explosion and fire occurred in the laundry room of her apartment building in Willowbrook, Illinois. The cause of the explosion and fire was attributed to gasoline leaking into the sewer system from an underground storage tank situated at a Speedway gas station nearly 1½ miles from Margaret's apartment building. Margaret filed this action against Marathon Petroleum Corporation and its subsidiary, Speedway, LLC, which owns and operates the Speedway gas station. The station's manager, Manoj Valiathara, was also named as a defendant. Subsequently, Margaret died and her daughter, Laura, was substituted as the plaintiff in her capacity as special representative of Margaret's estate. Marathon, Speedway, and Valiathara (collectively, the Speedway defendants) filed a third-party complaint against multiple parties whose negligence, they claimed, contributed to Margaret's injuries.[2]

¶ 4 Rice's[3] amended complaint against the Speedway defendants asserted six counts. Counts I, II, and III (the EPA counts) alleged that the respective Speedway defendants violated several provisions of the Leaking Underground Storage Tank Program (LUST) (415 ILCS 5/57 *et seq.* (West 2016)), which is part of Illinois's Environmental Protection Act (EPA) (415 ILCS 5/1 *et*

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[1]In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order.

[2]The third-party defendants are not parties to this appeal.

[3]Rice refers to Laura Rice, as Special Representative of the Estate of Margaret Rice.

seq. (West 2016)). Rice asserted that the LUST violations caused the gasoline leakage, which resulted in the explosion and fire that injured Margaret. Counts IV, V, and VI (the negligence counts) expressly incorporated the allegations contained in the EPA counts to assert that each of the Speedway defendants were negligent based on the same acts and omissions. Rice sought both compensatory and punitive damages. The Speedway defendants filed a motion to dismiss the EPA counts pursuant to section 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2016)) and an answer to the negligence counts. In the motion to dismiss, the Speedway defendants argued that LUST does not provide a private right of action. The circuit court agreed and granted the motion to dismiss the EPA counts by written order. The order included an express finding pursuant to Supreme Court Rule 304(a) (eff. Mar. 8, 2016) that "[t]here is no just reason for delaying either enforcement or appeal." Rice filed a motion to reconsider, which the trial court denied. Rice then filed a notice of appeal from the court's dismissal of the EPA counts. Subsequently, Rice and the Speedway defendants reached a settlement on the remaining negligence counts.[4] Their settlement agreement and agreed order to voluntarily dismiss the negligence counts expressly stated that they had only resolved the negligence counts and were continuing to litigate the EPA counts through this appeal.

¶ 5 We are obliged to consider our jurisdiction even if the parties fail to raise the issue. *Trutin v. Adam*, 2016 IL App (1st) 142853, ¶ 21. The Illinois Constitution gives the appellate court jurisdiction to review final judgments entered in the circuit court. *EMC Mortgage Corp. v. Kemp*,

[4]We are aware of the settlement since it is at issue and contained in the record of a separate appeal pending before us involving the Speedway defendants' third-party claims for contribution. "We may take judicial notice of the record in another case involving the same party or of public documents contained in the record of any other judicial proceeding if doing so would aid us in deciding the instant appeal." *In re Marcus S.*, 2022 IL App (3d) 170014, ¶ 46, n. 4.

2012 IL 113419, ¶ 9. The appellate court may only review nonfinal orders when appeal of such an order is permitted by a supreme court rule. *Id.*

¶ 6 Here, Rice predicates our jurisdiction on Rule 304(a). This rule permits appeal from final orders that dispose of less than all claims in an action before the circuit court, but only if the circuit court makes a special finding that no just cause for delay of appeal exists. See Ill. S. Ct. R. 304(a) (eff. Mar. 8, 2016). When a circuit court makes such a finding, however, that finding does not necessarily determine our jurisdiction. *Blumenthal v. Brewer*, 2016 IL 118781, ¶ 24. The special finding makes a final order appealable, but it has no effect on a nonfinal order. *Id.* If an order is not final, it is not appealable pursuant to Rule 304(a) even if the circuit court includes the special finding. *Id.*

¶ 7 The order Rice seeks to appeal disposed of the EPA counts while the negligence counts remained pending. However, both the EPA counts and the negligence counts relate to the same basic claim: that the Speedway defendants' acts and omissions caused the explosion and fire that injured Margaret. When an order disposes of only certain issues relating to the same basic claim, the order is not subject to review pursuant to Rule 304(a). *Id.* ¶ 27. Consistent with that principle, our precedent holds that when an order disposes of fewer than all counts, but other counts based on the same operative facts remain pending before the circuit court, the order is not a final judgment and may not be appealed even if the circuit court includes the Rule 304(a) special finding. *Id.* (citing *Davis v. Loftus*, 334 Ill. App. 3d 761, 766 (2002)); *Illinois State Bar Ass'n Mutual Insurance Co. v. Canulli*, 2019 IL App (1st) 190141, ¶ 17. Here, the EPA counts and the negligence counts differ in theory of liability but are based on the same operative factual allegations. They are the same basic claim. Therefore, the dismissal of the EPA counts was not a

final judgment. Consequently, the circuit court's order was not appealable, and its special finding did not confer appellate jurisdiction. Rice's notice of appeal was premature.

¶ 8 We note that the remaining negligence counts were resolved by settlement and voluntary dismissal. However, when a notice of appeal is filed prematurely, subsequent disposition of relevant matters in the circuit court does not cure the jurisdictional defect. *In re Marriage of Tomei*, 253 Ill. App. 3d 663, 666-67 (1993) (finding appellate court lacked jurisdiction when pending fee petition was dismissed after premature notice of appeal was filed); *In re Marriage of Merrick*, 183 Ill. App. 3d 843, 845 (1989) (same when pending matters were later resolved in the circuit court). Future resolution in the circuit court does not make a premature notice of appeal effective retroactively.

¶ 9 We recognize that this outcome seems to put form over substance. Nevertheless, the supreme court rules are not mere suggestions (*In re Denzel W.*, 237 Ill. 2d 285, 294 (2010)), and we may not disregard jurisdictional barriers for convenience.

¶ 10 For these reasons, we conclude that we lack jurisdiction and dismiss this appeal.

¶ 11 Appeal dismissed.

STATUTES INVOLVED
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STATUTES INVOLVED

1. **Ill. Const., Art. XI, §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.

2. **Ill. Const., Art. XI, §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.

3. **415 ILCS 5/2 Environmental Protection Act [Legislative findings; purpose; construction]**

(a) The General Assembly finds:

> **(i) that environmental damage seriously endangers the public health and welfare,** as more specifically described in later sections of this Act;
>
> **(ii)** that because environmental damage does not respect political boundaries, it is necessary to establish a unified state-wide program for environmental protection and to cooperate fully with other States and with the United States in protecting the environment;...
>
> **(v)** that in order to alleviate the burden on enforcement agencies, to assure that all interests are given a full hearing, and to increase public participation in the task of protecting the environment, **private as well as governmental remedies must be provided;**
>
> **(vi)** that despite the existing laws and regulations concerning environmental damage there exist continuing destruction and damage to the environment and harm to the public health, safety and welfare of the people of this State, and that among the most significant sources of this destruction, damage, and harm are the improper and unsafe transportation, treatment, storage, disposal, and dumping of hazardous wastes;

(b) It is the purpose of this Act, as more specifically described in later sections, 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.

(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,...(emphasis added)

4. **415 ILCS 5/3.315 Person**

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

5. **415 ILCS 5/7.2 Identical in substance rulemakings**

a) In the context of a mandate that the Board adopt regulations to secure federal authorization for a program, regulations that are "identical in substance" means State regulations which require the same actions with respect to protection of the environment, by the same group of affected persons, as would federal regulations if USEPA administered the subject program in Illinois. After consideration of comments from the USEPA, the Agency, the Attorney General and the public, the Board shall adopt the verbatim text of such USEPA regulations as are necessary and appropriate for authorization of the program. In adopting "identical in substance" regulations, the only changes that may be made by the Board to the federal regulations are those changes that are necessary for compliance with the Illinois Administrative Code, and technical changes that in no way change the scope or meaning of any portion of the regulations, ...

6. **Title XVI. Petroleum Underground Storage Tanks (§ 5/57 — 5/57.19): 415 ILCS 5/57 Intent and Purpose**

This Title shall be known and may be cited as the Leaking Underground Storage Tank Program **(LUST).**The purpose of this Title is, in accordance with the requirements of the Hazardous and Solid Waste Amendments of 1984 of the Resource Conservation and Recovery Act of 1976 [42 U.S.C. § 6901 et seq.] and in accordance with the State's interest in the protection of Illinois' land and water resources:.. (3) to establish an Underground Storage Tank Fund intended to be a State fund by which persons who qualify for access to the Underground Storage Tank Fund may satisfy the financial responsibility requirements under applicable State law and regulations;

7. **415 ILCS 5/57.2 Definitions**

"Bodily injury" means bodily injury, sickness, or disease sustained by a person, including death at any time, resulting from a release of petroleum from an underground storage tank.

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing of petroleum from an underground storage tank into groundwater, surface water or subsurface soils.

"Fund" means the Underground Storage Tank Fund.

"Indemnification" means indemnification of an owner or operator for the amount of any judgment entered against the owner or operator **in a court of law**, for the amount of any

final order or determination made against the owner or operator by an agency of State government or any subdivision thereof, **or for the amount of any settlement entered into by the owner or operator, if the judgment, order, determination, or settlement arises out of bodily injury or property damage suffered as a result of a release of petroleum from an underground storage tank owned or operated by the owner or operator.** (emphasis added)

"Occurrence" means an accident, including continuous or repeated exposure to conditions, that results in a sudden or nonsudden release from an underground storage tank.

When used in connection with, or when otherwise relating to, underground storage tanks, the terms **"facility"**, **"owner"**, **"operator"**, **"underground storage tank"**, **"(UST)"**, **"petroleum"** and **"regulated substance"** shall have the meanings ascribed to them in Subtitle I of the Hazardous and Solid Waste Amendments of 1984 (P.L. 98-616), of the Resource Conservation and Recovery Act of 1976 (P.L. 94-580) [42 U.S.C. § 6921 et seq.];...

"Property damage" means physical injury to, destruction of, or contamination of tangible property, including all resulting loss of use of that property; or loss of use of tangible property that is not physically injured, destroyed, or contaminated, but has been evacuated, withdrawn from use, or rendered inaccessible because of a release of petroleum from an underground storage tank.

8. **415 ILCS 5/57.3 Underground Storage Tank Program**:

The General Assembly hereby establishes the Illinois Leaking Underground Storage Tank Program (**LUST Program**). The LUST Program shall be administered by the Office of the State Fire Marshal and the Illinois Environmental Protection Agency.

9. **415 ILCS 5/57.4 State Agencies**

The Office of State Fire Marshal and the Illinois Environmental Protection Agency shall administer the Leaking Underground Storage Tank Program in accordance with the terms of this Title.

10. **415 ILCS 5/57.8 Underground Storage Tank Fund; payment; options for State payment; deferred correction election to commence corrective action upon availability of funds**: ...

(c) When the owner or operator requests indemnification for payment of costs incurred as a result of a release of petroleum from an underground storage tank, if the owner or operator has satisfied the requirements of subsection (a) of this Section, the Agency shall forward a copy of the request to the Attorney General. **The Attorney General shall review and approve the request for indemnification if:**

(1) there is a legally enforceable judgment entered against the owner or operator and such judgment was entered due to harm caused by a release of petroleum from an underground storage tank and such judgment was not entered as a result of fraud; or

(2) a settlement with a third party due to a release of petroleum from an underground storage tank is reasonable...(emphasis added)

(g) The Agency shall not approve any payment from the Fund to pay an owner or operator:

(1) for costs of corrective action incurred by such owner or operator in an amount in excess of $1,500,000 per occurrence; and

(2) for costs of indemnification of such owner or operator in an amount in excess of $1,500,000 per occurrence.

(h) Payment of any amount from the Fund for corrective action or indemnification shall be subject to the State acquiring by subrogation the rights of any owner, operator, or other person to recover the costs of corrective action or indemnification for which the Fund has compensated such owner, operator, or person from the person responsible or liable for the release...

(k) The Agency shall not pay costs of corrective action or indemnification incurred before providing notification of the release of petroleum in accordance with the provisions of this Title.

11. **415 ILCS 5/57.12 Underground storage tanks; enforcement; liability:**

(a) Notwithstanding any other provision or rule of law, the owner or operator, or both, of an underground storage tank shall be liable for all costs of investigation, preventive action, corrective action and enforcement action incurred by the State of Illinois resulting from an underground storage tank. Nothing in this Section shall affect or modify in any way:

(1) The obligations or liability of any person under any other provision of this Act or State or federal law, including common law, for damages, injury or loss resulting from a release or substantial threat of a release as described above; ...

(g) The standard of liability under this Section is the standard of liability under Section 22.2(f) of this Act [415 ILCS 5/22.2]

(h) Neither the State of Illinois, nor the Director of the Agency, nor any State employee shall be liable for any damages or injuries arising out of or resulting from any action taken under this Section...

12. **415 ILCS 5/22.2 Hazardous waste; fees; liability** ...

(f) Notwithstanding any other provision 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 a release of a hazardous substance or pesticide:

(1) the owner and operator of a facility or vessel from which there is a release or substantial threat of release of a 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 a release of any such hazardous substance or pesticide;

(3) any person who by contract, agreement, or otherwise has arranged with another party or entity for transport, storage, disposal or treatment of hazardous substances or pesticides owned, controlled or possessed by such person at a facility owned or operated by another party or entity from which facility there is a release or substantial threat of a release of such hazardous substances or pesticides; and...

(j)

(1) There shall be no liability under this Section for a person otherwise liable who can establish by a preponderance of the evidence that the release or substantial threat of release of a hazardous substance and the damages resulting therefrom were caused solely by:

(A) an act of God;

(B) an act of war;

(C) an act or omission of a third party other than an employee or agent of the defendant, or other than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant (except where the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier by rail), if the defendant establishes by a preponderance of the evidence that (i) he exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances, and (ii) he took precautions against foreseeable acts or omissions of

any such third party and the consequences that could foreseeably result from such acts or omissions; or

(D) any combination of the foregoing paragraphs.

13. **415 ILCS 5/42 Civil penalties**

(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 …

(d) The penalties provided for in this Section may be recovered in a civil action.

(h) In determining the appropriate civil penalty to be imposed under subdivisions (a), (b)(1), (b)(2), (b)(3), (b)(5), (b)(6), or (b)(7) of this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including, but not limited to, the following factors:

(1) the duration and gravity of the violation;

(2) the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;

(3) any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;

(4) the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;

(5) the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;

(6) whether the respondent voluntarily self-disclosed, in accordance with subsection (i) of this Section, the non-compliance to the Agency;

(7) whether the respondent has agreed to undertake a "supplemental environmental project", which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an

enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform; and

(8) whether the respondent has successfully completed a Compliance Commitment Agreement under subsection (a) of Section 31 of this Act [415 ILCS 5/31] to remedy the violations that are the subject of the complaint…

(i) A person who voluntarily self-discloses non-compliance to the Agency, of which the Agency had been unaware, is entitled to a 100% reduction in the portion of the penalty that is not based on the economic benefit of non-compliance if the person can establish the following:

(3) that the non-compliance was discovered and disclosed prior to:

(i) the commencement of an Agency inspection, investigation, or request for information;

(ii) **notice of a citizen suit;**

(iii) **the filing of a complaint by a citizen,** the Illinois Attorney General, or the State's Attorney of the county in which the violation occurred; …

(v) imminent discovery of the non-compliance by the Agency;

(6) that no related non-compliance events have occurred in the past 3 years at the same facility or in the past 5 years as part of a pattern at multiple facilities owned or operated by the person;

(7) that the non-compliance did not result in serious actual harm or present an imminent and substantial endangerment to human health or the environment or…

(9) that the non-compliance was identified voluntarily…(emphasis added)

14. **415 ILCS 5/44(a) Criminal acts; penalties**

(a) Except as otherwise provided in this Section, it shall be a Class A misdemeanor to violate this Act or regulations thereunder, or any permit or term or condition thereof, or knowingly to submit any false information under this Act or regulations adopted thereunder, or under any permit or term or condition thereof…

15. **415 ILCS 5/44(h)(3) Criminal acts; penalties; Violations; False Statements**

Any person who knowingly destroys, alters, or conceals any record required to be made by this Act in connection with the disposal, treatment, storage, or transportation of hazardous waste commits a Class 4 felony. A second or any subsequent offense after a conviction hereunder is a Class 3 felony.

16. **415 ILCS 5/44(h) (4.5) Criminal acts; penalties; Violations; False Statements**

"Any person who knowingly makes a false material statement or representation in any label, manifest, **record**, report, permit or license, or other document filed, **maintained,** or used for the purpose of compliance with **Title XVI** of this Act commits a Class 4 felony. Any second or subsequent offense after conviction hereunder is a Class 3 felony." (emphasis added)

17. **415 ILCS 5/58.1**, Title XVII. Site Remediation Program; **Applicability**:

(2) Any person, including persons required to perform investigations and remediations under this Act, may elect to proceed under this Title **unless...(iii) the site is subject to federal or State underground storage tank laws, ...**(emphasis added)

18. **430 ILCS 15/1 Gasoline Storage Act [Unlawful storage, transportation, sale, and use of volatile combustibles]**

It shall be unlawful for any person, firm, association or corporation to keep, store, transport, sell or use any crude petroleum, benzine, benzol, gasoline, naphtha, ether or other like volatile combustibles, or other compounds, in such manner or under such circumstances as will jeopardize life or property.

19. **430 ILCS 15/2 Jurisdiction; regulation of tanks**

(1)

(a) Except as otherwise provided in this Act, the jurisdiction of the Office of the State Fire Marshal under this Act shall be concurrent with that of municipalities and other political subdivisions. The Office of the State Fire Marshal has power to promulgate, pursuant to the Illinois Administrative Procedure Act [5 ILCS 100/1-1 et seq.], reasonable rules and regulations governing the keeping, storage, transportation, sale or use of gasoline and volatile oils...

(b) The rulemaking power shall include the power to promulgate rules providing for the issuance and revocation of permits allowing the self service dispensing of motor fuels as such term is defined in the Motor Fuel Tax Law [35 ILCS 505/1 et seq.] in retail service stations or any other place of business where motor fuels are dispensed into the fuel tanks of motor vehicles, internal combustion engines or portable containers. Such rules

shall specify the requirements that must be met both prior and subsequent to the issuance of such permits in order to insure the safety and welfare of the general public. The operation of such service stations without a permit shall be unlawful.

(3)

(a) The Office of the State Fire Marshal shall have authority over underground storage tanks which contain, have contained, or are designed to contain petroleum, hazardous substances and regulated substances as those terms are used in Subtitle I of the Hazardous and Solid Waste Amendments of 1984 (P.L. 98-616), as amended by the Superfund Amendments and Reauthorization Act of 1986 (P.L. 99-499). The Office shall have the power with regard to underground storage tanks to require any person who tests, installs, repairs, replaces, relines, or removes any underground storage tank system containing, formerly containing, or which is designed to contain petroleum or other regulated substances, to obtain a permit to install, repair, replace, reline, or remove the particular tank system, and to pay a fee set by the Office for a permit to install, repair, replace, reline, upgrade, test, or remove any portion of an underground storage tank system.

(b)...

(ii) The Office of the State Fire Marshal may adopt additional regulations relating to an underground storage tank program that are not inconsistent with and at least as stringent as Section 9003 of Subtitle I of the Hazardous and Solid Waste Amendments of 1984 (P.L. 98-616) of the Resource Conservation and Recovery Act of 1976 (P.L. 94-580), as amended, or regulations adopted thereunder.

20. **430 ILCS 15/6.1 Financial responsibility:**

(a) Each owner or operator shall establish and maintain evidence of financial responsibility, as provided in this Section, for taking corrective action **and compensating third parties for bodily injury and property damage.**

(b) Each owner or operator shall maintain financial responsibility at the following minimum amounts:

(1) $10,000 per occurrence for corrective action;

(2) **$10,000 per occurrence for bodily injury and property damage to third parties.** (emphasis added)

21. **41 Ill. Adm. Code 175: Authority & General Source**

Implementing the Gasoline Storage Act [**430 ILCS 15**] and authorized by Section 2 of the Gasoline Storage Act [**430 ILCS 15/2**].

22. **41 Ill. Adm. Code 175.610 General Release Detection Requirements for All USTs**

a) Owners or operators of new and existing USTs shall provide a method, or combination of methods, of release detection that:

1) Can detect a release from the entire tank and any portion of the connected underground piping that routinely contains product;
2) Is installed, calibrated, operated and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition; and
3) Meets the performance requirements in Sections 175.630 and 175.640 …

c) When a release detection method operated in accordance with the performance standards in Sections 175.630 and 175.640 indicates a release may have occurred, owners or operators shall notify the Illinois Emergency Management Agency in accordance with 41 Ill. Adm. Code 176.300 through 176.330...

23. **41 Ill. Adm. Code 175.620 Release Detection Requirements for Hazardous Substances USTs**

a) Owners or operators of hazardous substance USTs, permitted prior to February 1, 2008, shall provide release detection that complies with Section 175.610 and 40 CFR 280.42, and shall be designed, constructed and installed to contain regulated substances released from the tank system until they are detected and removed, prevent the release of regulated substances to the environment at any time during the operational life of the UST, and be checked at least every 30 days for evidence of a release...

24. **41 Ill. Adm. Code 175.630 Methods of and Requirements for Release Detection for Tanks**

Owners and operators of petroleum USTs shall provide release detection on tanks…

25. **41 Ill. Adm. Code 175.640 Methods and Requirements for Release Detection for Piping**

Owners and operators of petroleum USTs shall provide release detection for all piping containing regulated substances. The release detection must meet the requirements specified in this Section..

26. **41 Ill. Adm. Code 176.200 Definitions**

"**Bodily Injury**" means bodily injury, sickness or disease sustained by a person, including death at any time, resulting from a release of petroleum from a UST.

"**IEMA**" means the Illinois Emergency Management Agency.

"**Occurrence**" means an accident, including continuous or repeated exposure to conditions, that results in a release of petroleum into the environment from a UST.

"**OSFM**" means the Office of the State Fire Marshal.

"**Property Damage**" means physical injury to, destruction of, or contamination of tangible property, including all resulting loss of use of that property; or loss of use of tangible property that is not physically injured, destroyed or contaminated, but has been evacuated, withdrawn from use, or rendered inaccessible because of an occurrence.

"**Provider of Financial Assurance**" means an entity that provides financial assurance to an owner or operator of a UST through one or more mechanisms listed in Section 176.215, including the fiduciary of a designated savings account.

"**Underground Storage Tank Trust Fund**" or "**UST Fund**" means the fund created as a special fund in the Illinois State Treasury at 415 ILCS 5/57.11.

"**UST**" means underground storage tank system.

27. **41 Ill. Adm. Code 176.205 Applicability**

a) This Subpart B applies to all owners or operators of USTs in the ground as of April 1, 1995 and implements Section 6.1 of the Gasoline Storage Act [430 ILCS 15/6.1], which imposes a State law financial assurance requirement of $ 20,000 per owner or operator…

c) Although the UST Fund assists certain petroleum UST owners in paying for corrective action or **third-party liability** (see 415 ILCS 5/57.9), for purposes of this Subpart the UST Fund is not considered a mechanism for the financial responsibility compliance required under Section 6.1 of the Gasoline Storage Act as implemented by this Subpart. (emphasis added)

28. **41 Ill. Adm. Code 176.210 Amount**

Each owner or operator shall maintain financial responsibility in the sum of $ 20,000, regardless of the number of USTs or facilities owned or operated. This $ 20,000 shall be comprised as follows:

a) $ 10,000 per occurrence for corrective action; and

b) $ 10,000 per occurrence for **third-party liability for bodily injury or property damage.** (emphasis added)

29. **41 Ill. Adm. Code 176.300 Reporting of Suspected Releases:**

a) Owners or operators of USTs **shall immediately report to IEMA** (from Illinois, 1-800-782-7860; from outside Illinois, 217/782-7860) and follow the procedures in Sections 176.310, 176.320(b) and (c) and 176.350 in any of the following situations: (emphasis added)

1) The discovery by owners, operators, product delivery drivers or others of released regulated substances at the UST site or in the surrounding area (such as the presence of free product or vapors in soils, basements, sewer or utility lines or nearby surface water);

2) Unusual operating conditions observed by owners or operators (such as the erratic behavior of product dispensing equipment, **the sudden loss of product from the UST or an unexplained presence of water in the tank**), unless system equipment is found to be defective but not leaking and is immediately repaired or replaced; or (emphasis added)

3) Monitoring results from a release detection method required under 41 Ill. Adm. Code 175.620, 175.630 or 175.640 **that indicate a release may have occurred**, unless:

A) The monitoring device is found to be defective and is immediately repaired, recalibrated or replaced, and additional monitoring does not confirm the initial result; or

B) In the case of monthly inventory control, a second month of data does not confirm the initial result; however, the immediate reporting requirement under this Section remains in effect.

b) In addition to IEMA, the 911 call center shall immediately be called when a suspected release presents a hazard to life, for example, when observations demonstrate the presence of petroleum or hazardous substance vapors in sewers or basements or free product near utility lines, or where a sheen is present on a body of water. (emphasis added)

c) Once a release has been confirmed under the procedures of Section 176.310, the reporting procedures of Section 176.320 shall apply…(emphasis added)

30. **41 Ill. Adm. Code 176.310 Release Investigation Reporting and Site Assessment**

a) Investigation Due to Off-Site Impact. When required in writing by OSFM, owners or operators of USTs shall determine if the UST is the source of off-site impacts. These

impacts include the discovery of regulated substances, such as the presence of free product or vapors in soils, basements, sewer or utility lines or nearby surface or drinking water that have been observed by OSFM or brought to its attention by another party.

31. **41 Ill. Adm. Code 176.320 Initial Response and Reporting of Confirmed Releases**

Initial Response. Upon confirmation of a release of a regulated substance, owners or operators **shall perform the following initial response actions:**

a) **Immediately report the release**.

1) The release shall be reported by calling the 911 call center and then IEMA in the following situations:

A) Spills and overfills of petroleum products over 25 gallons and spills and overfills of hazardous substances over a reportable quantity as defined in 41 Ill. Adm. Code 174.100.

B) Spills, overfills or confirmed releases that present a hazard to life, for example, when observations demonstrate the presence of petroleum or hazardous substance vapors in sewers or basements or free product near utility lines, or where a sheen is present on a body of water.

2) All other confirmed releases shall be reported to the local authority having jurisdiction and to IEMA. A call to the fire department in whose jurisdiction the release occurred may be done in the absence of an available 911 emergency telephone number. IEMA may be reached at 1-800-782-7860 (from inside Illinois) or 217-782-7860 (from outside Illinois). If known, the caller shall inform IEMA whether the same release had previously been called in as a suspected release.

3) A release of a hazardous substance equal to or in excess of the reportable quantity shall be reported to the following entities in addition to those identified in subsection (a)(1):

A) to the Local Emergency Planning Committee (LEPC) that is likely to be affected by the release (found at http://www.state.il.us/iema/ disaster/LEPCContactList.xls); and

B) the National Response Center (800-424-8802);

b) Take immediate action to prevent any further release of the regulated substance into the environment; and

c) Immediately identify and mitigate fire, explosion and vapor hazards. (emphasis added)

32. **41 Ill. Adm. Code 176.340 Reporting and Cleanup of Spills and Overfills**

a) Owners or operators of USTs **shall contain and immediately clean up a spill or overfill, immediately report either release to the 911 call center and then to IEMA,** and begin initial response and initial abatement in accordance with Sections 176.310, 176.320 and 176.350, in the following situations:

1) Spill or overfill of petroleum that results in a release to the environment that exceeds 25 gallons or that causes a sheen on a nearby body of water; or

2) Spill or overfill of a hazardous substance that results in a release to the environment that equals or exceeds the reportable quantity (see 41 Ill. Adm. Code 174.100). Under Section 176.320, this kind of release shall also be immediately reported to the Local Emergency Planning Committee and to the National Response Center. (emphasis added)

33. **41 Ill. Adm. Code 176.350 Initial Release Abatement Measures**

Unless directed in writing to do otherwise by OSFM, owners or operators **shall perform the following release abatement measures:**

a) Remove as much of the regulated substance from the UST as is necessary to prevent further release to the environment;

b) Visually inspect any aboveground release or exposed belowground release and prevent further migration of the released substance into surrounding soils and groundwater;

c) Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the UST excavation zone and entered into subsurface structures (such as sewers or basements); ...(emphasis added)

34. **41 Ill. Adm. Code 176.410 General Requirement to Maintain All Equipment**

All equipment and other items shall be maintained in accordance with 41 Ill. Adm. Code 174 through 176 and manufacturer's instructions and otherwise shall be kept in good operating condition at all times.

35. **41 Ill. Adm. Code 176.600 Operator Training; Purpose**

The purpose of this Subpart is to set forth procedures for underground storage tank operator training and inspections and to determine when the training and inspections are required

36. **35 Ill. Adm. Code 734.100 Applicability**

a) This Part applies to owners or operators of any underground storage tank system used to contain petroleum and for which a release is reported to Illinois Emergency Management Agency (IEMA) in accordance with the Office of State Fire Marshal (OSFM) regulations. This Part does not apply to owners or operators of sites for which the OSFM does not require a report to IEMA or for which the OSFM has issued or intends to issue a certificate of removal or abandonment pursuant to Section 57.5 of the Act [415 ILCS 5/57.5].

37. **35 Ill. Adm. Code 734.115 Definitions**

Except as stated in this Section, or unless a different meaning of a word or term is clear from the context, the definitions of words or terms in this Part must be the same as those applied to the same words or terms in the Environmental Protection Act [415 ILCS 5].

"Act" means the Environmental Protection Act [415 ILCS 5].

"Agency" means the Illinois Environmental Protection Agency…

"Bodily Injury" means bodily injury, sickness, or disease sustained by a person, including death at any time, resulting from a release of petroleum from an underground storage tank [415 ILCS 5/57.2].

"IEMA" means the Illinois Emergency Management Agency.

"Occurrence" means an accident, including continuous or repeated exposure to conditions, that results in a sudden or nonsudden release from an underground storage tank [415 ILCS 5/57.2].

"OSFM" means the Office of the State Fire Marshal.

"Operator" means any person in control of, or having responsibility for, the daily operation of the underground storage tank. (Derived from 42 USC 6991)

"Property Damage" means physical injury to, destruction of, or contamination of tangible property owned by a person other than an owner or operator of the UST from which a release of petroleum has occurred and which tangible property is located off the site where the release occurred. Property damage includes all resulting loss of use of that property; or loss of use of tangible property that is not physically injured, destroyed or contaminated, but has been evacuated, withdrawn from use, or rendered inaccessible because of a release of petroleum from an underground storage tank. [415 ILCS 5/57.2]…

"Regulated Substance" means any substance defined in Section 101(14)... and petroleum. (Derived from 42 USC 6991)

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum from an underground storage tank into groundwater, surface water or subsurface soils [415 ILCS 5/57.2]...

"UST system" or **"tank system"** means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

38. **35 Ill. Adm. Code 734.600 Petroleum Underground Storage Tanks Subpart F. Payment from the Fund; General**

The Agency has the authority to review any application for payment or reimbursement and to authorize payment or reimbursement from the Fund or such other funds as the legislature directs for corrective action activities conducted pursuant to the Act and this Part. For purposes of this Part and unless otherwise provided, the use of the word "payment" must include reimbursement. The submittal and review of applications for payment and the authorization for payment must be in accordance with the procedures set forth in the Act and this Subpart F.

39. **35 Ill. Adm. Code 734.620 Limitation on Total Payments**

a) Limitations per occurrence:

1) The Agency shall not approve any payment from the Fund to pay an owner or operator for costs of **corrective action** incurred by such owner or operator in an amount in excess of $ 1,500,000 per occurrence [415 ILCS 5/57.8(g)(1)]; and (emphasis added)

2) The Agency shall not approve any payment from the Fund to pay an owner or operator for **costs of indemnification** of such owner or operator in an amount in excess of $ 1,500,000 per occurrence [415 ILCS 5/57.8(g)(2)]. (emphasis added)

40. **35 Ill. Adm. Code 734.645 Subrogation of Rights**

Payment of any amount from the fund **for corrective action or indemnification** shall be subject to the State acquiring by subrogation the rights of any owner, operator, or other person to recover the costs of corrective action or indemnification for which the fund has compensated such owner, operator, or person from the person responsible or liable for the release [415 ILCS 5/57.8(h)]. (emphasis added)

41. **35 Ill. Adm. Code 734.650 Indemnification**

a) An owner or operator seeking indemnification from the Fund for payment of costs incurred as a result of a release of petroleum from an underground storage tank must submit to the Agency a request for payment on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format.

1) A complete application for payment must contain the following:

A) A certified statement by the owner or operator of the amount sought for payment;

B) Proof of the legally enforceable judgment, final order, or determination against the owner or operator, or the legally enforceable settlement entered into by the owner or operator, for which indemnification is sought. **The proof must include**, but not be limited to, the following:

i) **A copy of the judgment certified by the court clerk as a true and correct copy,** ... or a copy of the settlement certified by the owner or operator as a true and correct copy; and

ii) Documentation demonstrating that the judgment, final order, determination, or **settlement arises out of bodily injury or property damage suffered as a result of a release of petroleum from the UST for which the release was reported, and that the UST is owned or operated by the owner or operator**; ... (emphasis added)

b) The Agency must review applications for payment in accordance with this Subpart F. In addition, the Agency must review each application for payment to determine the following: ...

3) Whether there is sufficient documentation that the judgment, final order, determination, or settlement arises out of bodily injury or property damage suffered as a result of a release of petroleum from an underground storage tank owned or operated by the owner or operator; and

4) Whether the amounts sought for indemnification are eligible for payment...

d) Costs **ineligible** for indemnification from the Fund include, but are not limited to: ...

2) Amounts of a judgment, final order, determination, or settlement **that do not arise** out of bodily injury or property damage suffered as a result of a release of petroleum from an underground storage tank owned or operated by the owner or operator; ...

5) Amounts arising out of bodily injury or property damage suffered as a result of a release of petroleum from an underground storage tank for which the owner or operator **is not eligible** to access the Fund;

6) Legal fees or costs, ...(emphasis added)

42. **42 USC §6991 Definitions and exemptions**...

3) The term **"operator"** means any person in control of, or having responsibility for, the daily operation of the underground storage tank.

(4) The term **"owner"** means—

(A) in the case of an underground storage tank in use on the date of enactment of the Hazardous and Solid Waste Amendments of 1984 [enacted Nov. 8, 1984], or brought into use after that date, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances.

(5) The term **"person"** has the same meaning as provided in section 1004(15) [42 USCS § 6903(15)], except that such term includes a consortium, a joint venture, and a commercial entity, and the United States Government.

(6) The term **"petroleum"** means petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

(7) The term **"regulated substance"** means—...

(B) petroleum.

(8) The term **"release"** means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into ground water, surface water or subsurface soils.

(9) Trust Fund. The term **"Trust Fund"** means the Leaking Underground Storage Tank Trust Fund.

(10) The term **"underground storage tank"** means any one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is 10 per centum or more beneath the surface of the ground...

43. **42 USC§6991b(a)(c)(6)(d)(1) Release detection, prevention, and correction regulations**

(a) Regulations. The Administrator, . . .shall promulgate release detection, prevention, and correction regulations applicable to all owners and operators of underground storage tanks, as may be necessary to protect human health and the environment.
(c) Requirements. The regulations promulgated pursuant to this section shall include, but need not be limited to, the following requirements respecting all underground storage tanks—

(6) requirements for maintaining evidence of financial responsibility for taking corrective action **and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank.** (emphasis added)

(d) Financial responsibility.

(1) Financial responsibility required by this subsection may be established in accordance with regulations promulgated by the Administrator by any one, or any combination, of the following...

...in order to effectuate the purposes of this subtitle.

44. **42 USC § 6991c Approval of state programs.**

(a) Elements of State program...A State program may be approved by the Administrator under this section only if the State demonstrates that the State program includes the following requirements and standards and provides for adequate enforcement of compliance with such requirements and standards—

(1) requirements for maintaining a leak detection system, an inventory control system together with tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment;

(2) requirements for maintaining records of any monitoring or leak detection system or inventory control system or tank testing system;

(3) requirements for reporting of any releases and corrective action taken in response to a release from an underground storage tank;

(4) requirements for taking corrective action in response to a release from an underground storage tank;

(5) requirements for the closure of tanks to prevent future releases of regulated substances into the environment;

(6) requirements for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and

property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank; (emphasis added)

(7) standards of performance for new underground storage tanks; ...

(b) Federal standards.

(1) A State program submitted under this section may be approved only if the requirements under paragraphs (1) through (7) of subsection (a) are no less stringent than the corresponding requirements standards promulgated by the Administrator pursuant to section 9003(a) [42 USCS § 6991b(a)]...

(c) Financial responsibility.

(1) Corrective action and compensation programs administered by State or local agencies or departments may be submitted for approval under subsection (a)(6) as evidence of financial responsibility...

45. **42 USC § 6991g State Authority**

Nothing in this subtitle [42 USCS§§6991g et seq.] shall preclude or deny any right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, or standard of performance respecting underground storage tanks that is more stringent than a regulation, requirement, or standard of performance in effect under this subtitle [42 USCS §§ 6991 et seq.] or to impose any additional liability with respect to the release of regulated substances within such State or political subdivision.

46. **42 USC §6991k(a)(1) Delivery prohibition**

(a) Requirements.

(1) Prohibition of delivery or deposit... it shall be unlawful to deliver to, deposit into, or accept a regulated substance into an underground storage tank at a facility which has been identified by the Administrator or a State implementing agency to be ineligible for such delivery, deposit, or acceptance.

47. **40 CFR 280.92 Definition of Terms**

Accidental release means any sudden or nonsudden release of petroleum arising from operating an underground storage tank that results in a need for corrective action and/or compensation for bodily injury or property damage neither expected nor intended by the tank owner or operator.

48. **40 CFR 280.93 (a)(1)(b)(2)(d)(1)(2)(3)(e)(g)(h) Amount and scope of required financial responsibility.**

(a) Owners or operators of petroleum underground storage tanks must demonstrate financial responsibility for taking corrective action and **for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following per-occurrence amounts**:

> **(1)** For owners or operators of petroleum underground storage tanks that are located at petroleum marketing facilities, or that handle an average of more than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year; $1 million.

(b) Owners or operators of petroleum underground storage tanks must demonstrate financial responsibility for taking corrective action and **for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following annual aggregate amounts:** ...(emphasis added)

> **(2)** For owners or operators of 101 or more petroleum underground storage tanks, $2 million.

(d) Except as provided in paragraph (e) of this section, if the owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for:

> **(1)** Taking corrective action;
>
> **(2) Compensating third parties for bodily injury and property damage caused by sudden accidental releases; or**
>
> **(3) Compensating third parties for bodily injury and property damage caused by nonsudden accidental releases**, the amount of assurance provided by each mechanism or combination of mechanisms must be in the full amount specified in paragraphs (a) and (b) of this section. (emphasis added)

(e) If an owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different petroleum underground storage tanks, the annual aggregate required shall be based on the number of tanks covered by each such separate mechanism or combination of mechanisms...

(g) The amounts of assurance required under this section exclude legal defense costs.

(h) The required per-occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator.

49. **40 CFR 281, Approval of State Underground Storage Tank Programs**

50. **40 CFR 281.37(a)(1)(b)(c), Financial responsibility for UST systems containing petroleum.**

(a) In order to be considered no less stringent than the federal requirements for financial responsibility for UST systems containing petroleum, the state requirements for financial responsibility for petroleum UST systems must ensure that:

> **(1)** Owners and operators have $1 million per occurrence for corrective action and **third-party claims** in a timely manner to **protect human health** and the environment;. . .(emphasis added)

(a) States may allow the use of a wide variety of financial assurance mechanisms to meet this requirement. Each financial mechanism must meet the following criteria in order to be no less stringent than the federal requirements. The mechanism must: Be valid and enforceable; be issued by a provider that is qualified or licensed in the state; not permit cancellation without allowing the state to draw funds; **ensure that funds will only and directly be used for corrective action and third party liability costs;** and require that the provider notify the owner or operator of any circumstances that would impair or suspend coverage. (emphasis added)

(c) States must require owners and operators to maintain records that demonstrate compliance with the state financial responsibility requirements, and these records must be made readily available when requested by the implementing agency

51. **40 CFR 281.37(a)(1)(b)(c), Operator training.**

In order to be considered no less stringent than the corresponding federal requirements for operator training, the state must have an operator training program that meets the minimum requirements of section 9010 of the Solid Waste Disposal Act.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

LAURA RICE, Special Representative for
MARGARET RICE, Deceased,
Plaintiff,
v.
SPEEDWAY, LLC, et al.,
Defendatnts/Third-Party Plaintiffs,

18L783
consolidated with
18L10930

ORDER

This cause coming on call on Defendants' Motion to Dismiss Counts I, II, and III of Plaintiff's First Amended Complaint, parties having received due notice, and the judge advised in the premises;

IT IS ORDERED that Defendants' Motion to Dismiss is granted because the IEPA, specifically LUST, does not provide for a private right of action for plaintiffs' requested remedies.

The IEPA, specifically LUST, does not provide for a private right of action. None is expressed. "Express," as an adjective, means "directly, firmly, and explicitly stated," according to the Merriam-Webster Dictionary. Against a clear, simple meaning of express, Plaintiffs' argument for an express right attempts to identify certain words in various locations of the statute, put them together, and then sum up a conclusory argument. Regarding plaintiffs' argument for an implied private right of action, this Court follows the reasoning in *Chrysler Realty Corp. v. Thomas Indus.*, 97 F.Supp.2d 877 (2000), which was followed by *Great Oak v. Begely Co.*, 2003 U.S. Dist. LEXIS 3186, and *Norfolk Southern Ry Co. v. Gee Co.*, 2001 U.S. Dist. LEXIS 10784. As stated in *Chrysler*, "this court concludes that if faced with the question, the Illinois Supreme Court, like the *NBD Bank* court, would conclude that the existing legislative scheme, which provides for enforcement by the state as well as citizen's suits before the board,

18L783

more than adequately serves the purpose of the statute, and that the statue is not ineffective absent an implied right of action." *Chrysler*, 97 F.Supp.2d at 881, citing *Fisher v. Lexington Healthcare, Inc.*, 188 Ill.2d 455, 460, 464 (1999) (Nursing Home Care Act), citing *Abbati v. Paraskevoulakos*, 187 Ill.2d 386, 395 (1999) (Lead Poisoning Prevention Act and City of Chicago Code). The *Chrysler* court notes that the purpose of the IEPA statute is to protect the environment and minimize environmental change. *Chrysler*, 97 F.Supp.2d at 880, citing *NBD Bank*, 292 Ill.App.3d at 697, citing 415 ILCS 5/20(b). The *Chrysler* opinion cites three cases that disagree, *Krempel v. Martin Oil*, 1995 WEST LAW 733439, *Midland Life Insurance Co. v. Regent Partners*, 1996 WEST LAW 604038, and *Singer v. Bulk Petroleum*, 9 F.Supp.2d 916, and one that agrees, *Browning-Ferris Industries v. Maat*, 1996 WEST LAW 535539. This Court finds the three in disagreement less persuasive.

This Court also reviewed cases with other Illinois statutes: *Rodgers v. St. Mary's Hosp.*, 149 Ill.2d 382 (X-Ray Retention Act); *Corgan v. Muehling*, 143 Ill.2d 296 (Psychologist Registration Act); and *Sawyer Realty Group, Inc. v. Jarvis Corp.*, 89 Ill.2d 379 (Brokers Licensing Act). In short, these cases are distinguishable from the present case in that the relationships among the plaintiffs, defendants, and statutes have closer, more specific and direct connections to the plaintiffs' causes of action.

During arguments at the hearing on October 13, 2021, this Court did not address two factors required to establish a private right of action because the two factors match the inquiry to determine whether Illinois Pattern Jury Instruction (Civil) 60.01 would be given during trial: whether the plaintiff is within the class designed to be protected by the statute and whether the statute was designed to protect against the type of the alleged injury. In response to plaintiff's counsel's request for Rule 304(a) language in this order and no objection from the defense at the

18L783

end of arguments, this Court is addressing these two factors to complete its record and support its conclusion that the IEPA, specifically LUST, does not provide plaintiffs with a private right of action.

In an analysis of the factors required to establish an implied private right of action, this Court notes that the purpose of the IEPA, specifically 415 ILCS 5/57 for LUST, is to adopt procedures for the remediation of underground storage tank sites due to the release of petroleum and other substances, establish and provide procedures to oversee and review remediation, establish a State fund, establish requirements for owners and operators to seek payment, and audit and approve correction action. The purpose of LUST in the context of the whole statute leads this Court to conclude that the statute was not designed to protect against plaintiffs' alleged personal injury and property damages and plaintiffs are not within the class designed to be protected by the statute.

Regarding Defendants' argument of redundant actions, the wording of section 2-619(a)(3) specifies "another action pending." The State's action in DuPage County over Defendant Speedways leaking underground storage tank, 2017CH001505, is not pending. The parties reached a settlement and entered into a consent order. The cases cited for the purpose or design of section 2-619(a)(3) all involve pending actions and the interpretation and application of that section to the facts of those cases: *Schact, Overnight*, *Kapoor*, and *Kellerman*. Although the *Katherine M.* opinion (called *Ryder* by the Court during the hearing) slips in the words "a prior pending action," *Katherine M.* involves a past federal consent decree that addressed and continued to address the same issues in the state case: better placement of minors by DCFS.

18C783

The Court also disagrees with Defendants' statute of limitations argument: the amended complaint relates back because the allegations arise out of the same transaction or occurrence: the underground storage tanks leaking into the sewer system.

In light of the above rulings, other arguments need not be addressed.

There is no just reason for delaying either enforcement or appeal.

ENTER:

James M. Varga.

ENTERED
Judge James M. Varga-1643
OCT 15 2021
IRIS Y. MARTINEZ
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

#37188

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

LAURA E. RICE, as Special Representative of the Estate of MARGARET L. RICE, deceased Plaintiffs, vs. MARATHON PETROLEUM CORPORATION, a Delaware Corporation, SPEEDWAY, LLC., a Delaware Limited Liability Company, and MANOJ VALIATHARA, Defendants.	)	No.: 18 L 000783 Consolidated w/18 L 010930

ORDER

This cause coming on to be heard on Plaintiff's Motion to Reconsider the Order of October 15, 2021, due notice having been given, and the Court being fully advised in the premises;

IT IS HEREBY ORDERED that Plaintiff's Motion is denied

ENTERED:

ENTERED
Judge James M. Varga-1643
JAN 26 2022
IRIS Y. MARTINEZ
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

JUDGE No.:

BUDIN LAW OFFICES - 37188
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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

LAURA RICE, Special Representative for
MARGARET RICE, Deceased,
Plaintiff,

v.

SPEEDWAY, LLC, et al.,
Defendants/Third-Party Plaintiffs,

18L783
consolidated with
18L10930

ORDER

This cause coming on call on Plaintiff's Motion to Reconsider the Order of October 15, 2021, parties duly notified, and the judge advised in the premises;

IT IS ORDERED that Plaintiff's Motion to Reconsider is denied. This Court reaffirms the ruling on October 15, 2021 that the IEPA does not provide a private right of action for Plaintiff. In essence, the Act, facts, and issue in this pending case are more aligned with the federal cases interpreting the IEPA that formed this Court's denial of the private right than Plaintiff's cited cases. Again, Plaintiff cites and argues rulings in other cases that are dissimilar to the Act, facts, and issue in this pending case: *Davis v. Marathon*, 64 Ill.2d 380 (1976) (IPI 60.01 issue); *Corgan v. Muehling*, 143 Ill.2d 296 (1991) (Psychologist Registration Act); and *Pilotto v. Urban Outfitters West, LLC*, 2017 IL App (1st) 160844 (Restroom Access Act). This Court finds unpersuasive Plaintiff's arguments for the interpretation and application of legal rulings from opinions that have dissimilar issues, facts, and Acts.

ENTERED:
Judge James M. Varga 1643
FEB 01 2022
IRIS Y. MARTINEZ
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

C 30743 V18

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - LAW DIVISION

LAURA E. RICE, as Special Representative of MARGARET L. RICE, deceased, Plaintiff, -vs- SPEEDWAY LLC, et al., Defendants/ Third-Party Plaintiffs. -vs- FLAGG CREEK WATER RECLAMATION DISTRICT, et al., Third-Party Defendants.	Case No. 2018-L-000783 Consolidated with: 2018-L-010930
EVA PATTERSON AND DAN PATTERSON, PlaintiffS, -vs- SPEEDWAY LLC, et al., Defendants/ Third-Party Plaintiffs. -vs- MONROE TRANSPORTATION, et al. Third-Party Defendants.	

Report of the remote proceedings had at the hearing in the above-entitled cause before the HONORABLE JAMES M. VARGA, Judge of said Court, appearing remotely via videoconference, commencing at 11:03 a.m. on October 13, 2021.

APPEARANCES:

BUDIN LAW OFFICES by
JOHN BUDIN, ESQUIRE (via videoconference)
On behalf of the Plaintiff, Laura E. Rice;

LITCHFIELD CAVO, LLP by
THOMAS CRAWFORD, ESQUIRE (via videoconference)
ALEXIS KARKULA, ESQUIRE (via videoconference)
On behalf of the Defendants, Speedway LLC, et al.;

COSTA IVONE, LLC by
AARON ZALUZEC, ESQUIRE (via videoconference)
On behalf of the Plaintiffs, Eva and Dan Patterson;

Also Present: David Strauss.

THE COURT: If my Zoom crashes, somebody call and do a conference call and I'll set up another date, okay? If it crashed again. I had the tech come. What he thinks this is a too old of a computer because the Zoom setup and chambers is not on the laptop. So the separate USB ports, they think it's too much. So if it crashes, that's what we did. The attorneys were great. They just called and we rescheduled, okay?

What I did was I pulled out the printer, which is USB. So I hope it works. But that's what happened with my last hearing, and that's what they did. And then, oh, the laptop. It was not working very well.

Okay. Go ahead. I won't say anything more. I know I can't cut off Mr. Crawford. So I want to move way back here on chambers here.

MR. CRAWFORD: Judge, you can do whatever you want. You're the judge.

THE COURT: Oh, no. I can't cut you off. No. You let it be known. You tried to play the poker face. But I was reading you. I ain't going to talk. Go ahead.

MR. CRAWFORD: Well, Judge, we're here on two motions to dismiss the EPA counts one in the Margaret Rice matter and one in the Eva and Dan Patterson matter.

I don't think that either of the plaintiffs' attorneys, Mr. Budin or Mr. Zaluzec, would disagree that they are essentially identical in what they are asserting.

THE COURT: Good.

MR. CRAWFORD: Yeah. So --

THE COURT: You see. I read a lot. This is Rice again. Look at all that writing on it. Okay.

MR. CRAWFORD: I think part of that is Mr. Budin's very long memorandum, which I've never seen done in support of a response brief. But the arguments that we're presenting are essentially identical for both Patterson and Rice. There is one additional argument that we are making for Margaret Rice as she is deceased, and that is that the statutory claims do not survive under the statute.

755 ILCS, which you probably know, section 5/27-6 is the survival act which outlines what counts can survive. And just so that it's clear, it says, "In addition to the actions which survive by common law, the following also survive." Clearly, the claims -- the EPA claims is how I'll reference them -- are not common law claims. So these are statutory claims. And the additional actions that survive are for replevin, to cover damages for an injury to a person except slander

or libel, actions to recover damages for an injury to real or personal property, or for detention or conversion of personal property.

There's additional allegations against officers, but I don't think those apply here. And so I'll just stop there, in that the statutory claims don't fall into any of those categories. So with respect to Margaret Rice, we don't believe these claims survived.

Aside from that, we also don't believe that these claims survive for either plaintiff, because there's already been an action that had been pending at the time that these suits were filed and that it was filed by the People of the State of Illinois on behalf of the EPA. And they were seeking damages and injunctive relief under the same EPA statute, the same EPA statute that includes subsections for leaking underground storage tanks. So the leaking underground storage tank sections are part of the EPA statute.

Rice's response brief argues that they weren't the same parties. They weren't identical parties, and so our argument fails. And under the case law, it's very clear that the parties need not be identical as long as they are substantially similar and that, in essence, both Rice and the Pattersons are

seeking to assert these claims under a provision which allows for private causes of action.

Mr. Budin, in his response brief, has stated that this is a case of first impression. I agree. I have not found anything. You get to make law, Judge.

THE COURT: I've done it quite a few times. I'm almost always right.

MR. CRAWFORD: Yeah. Well, good. But --

THE COURT: We might have this one too.

MR. CRAWFORD: Okay. Well --

THE COURT: I know that you're taking up against me. There's absolutely no evidence of collusion or fraud. Okay. Go ahead.

MR. CRAWFORD: Okay. Well, not here to address that. But I would agree with Mr. Budin. I have not found any cases that specifically address a private citizen's right to bring these causes of action and under what parameters, so we agree there.

THE COURT: Okay. This is the last time. I'm trying not to interrupt you, okay, because I know what I'm dealing with. I'm dealing with extremely intelligent, sophisticated lawyers who are so successful, okay? Repeat that again. There's no case for a private right. Okay. Whether or not there's a

private right of action under the EPA statute, there's no case? Is that what you said?

MR. CRAWFORD: Well, I don't believe that's what I said. And if I did, that's not what I intended to say, so I apologize.

MR. STRAUSS: Hey, do we have a court reporter?

THE COURT: Did you want one?

MR. CRAWFORD: We have one. All right. Well, we did.

THE COURT: I don't see one. Sorry. I hate to interrupt, but I thought you'd want one.

MR. CRAWFORD: We did order one, Judge. And --

MR. BUDIN: We ordered a court reporter.

THE COURT: Well, what do you want to do? Seriously, this is a big ruling. I --

MR. CRAWFORD: I'd like to hold off until we get the court reporter on.

THE REPORTER: Your Honor, this is Mitchell Gibson. I am the court reporter.

MR. CRAWFORD: Okay.

THE COURT: Where are you?

THE REPORTER: Right here.

THE COURT: Oh, there you are.

THE REPORTER: We're on the record.

THE COURT: Okay. Okay. I thought we were all lawyers. Well, I'm glad I asked. Okay. We do have a court reporter. Thank you very much. Mr. Gibson, are you solo? Are you with a --

THE REPORTER: I'm with Lexitas.

THE COURT: Okay. Okay. Sorry about that. I'm going to try really hard not to interrupt you again.

MR. BUDIN: Judge, I'm sorry. You almost gave me a heart attack. We ordered the court reporter and they're --

THE COURT: Got it.

MR. CRAWFORD: All right. Your Honor, so I apologize. If that's what I said, then I didn't mean to say that there were no cases where a private citizen can file suit. It's just that we have not found any case law where it was being challenged -- where they had standing or not, so. And maybe there is something out there. I just have not seen that. And Mr. Budin, I believe, also has not found anything either. And --

THE COURT: I hate to interrupt. But I am so honored to be participating with the likes of you all. There are cases, okay? There's a lot of cases, okay? Maybe not Illinois cases. There's no Illinois cases. But okay, everybody. Alexis. Why don't we have this

big argument about getting a case on point. It's not totally on point, but that's fine too.

So if you don't have a case in point, what do you do? Well, you go to other jurisdictions. And again, what you're going to try to do is look at the other jurisdictions that are not Illinois and there's a bunch in the federal or Northern District, which is kind of close. Although many times I disagree. So what you're trying to do which is persuasive information. So if there's nothing on point in my definition, then what you do is you could draw analogies to similar cases, or you go to other jurisdictions.

So I think what everybody wants to say -- Mr. Budin, you did the same thing . I know you're all -- and when I say slick, I mean very sophisticated lawyers. You couch the word like the defense did last time, which was you couch the phrase that there is something -- I don't know what you said. But I think what is true is that there is no personal injury case that attempts to create a private right of action under the EPA statute. I think that's true. There's no personal injury case.

And I didn't research as much as you did, everybody. I'm not good at it. So I think that that's true. There are negligence cases but they're property.

Okay. But I think, for the record, that's what your target says. In my limited experience. Now, I'm going to try real hard. Watch. Look at this. I'm going to move far away. Go, Mr. Crawford. Look. I'm moving real far back. Go ahead.

MR. CRAWFORD: Thank you, Your Honor. And we don't disagree with what you just said, and we would agree with that. But I don't think that we need to go too far to -- and I'm going to try very hard not to say case on point. You were very clear on that last time, so.

But we did find cases that we think are relevant and persuasive and that, in the Kapoor case, the court said that the parties need -- or the causes of action need not be identical. And in the Cummings v. Iron Hustler case, the court said that the test is satisfied if a litigant's interests are sufficiently similar, even though they differ in name or number.

So here, we have basically the Pattersons and Ms. Rice who are attempting to, for all intents and purposes, step into the shoes of the state because they believe that they're entitled to additional relief. Where we believe that they fail in pursuing these claims is that they are seeking the exact same penalties that

the state already pursued, and the legislative purpose of the EPA statute was that if the state or an agency had failed to act, that would allow a private citizen to pursue the claims and to either seek injunctive relief or the penalties that were allowed under 415 ILCS 5/42.

If you look at the attorney general's complaint, it clearly says in the prayer for relief that they are seeking the penalties under 415 ILCS 5-42 (sic). Well, they're seeking the damages. I guess Mr. Budin has an issue with the term penalties. But they're seeking statutory relief under that section. And then that's exactly the same relief that's being sought by sets of plaintiffs here.

So we believe that this is a duplicative suit. It arises out of the same Westmont incident that occurred on October 20th and all the events that followed after that. We believe that not only are these identical and that they're not allowed, that they're collaterally estoppel because these issues have already been resolved when the court entered a consent order whereby Speedway agreed to pay monetary damages, as well as agreed to the injunctive relief, which meant cleaning up the property, neighboring property, as well as monitoring the water, groundwater, and soil in the area.

Judge, we also believe that these matters are barred because, in both cases, we did not file a reply brief in the Patterson matter because there was no response brief filed. But again, these arguments are essentially the same. But neither plaintiff has shown that they've complied with the statute which requires them to exhaust their administrative remedies.

Essentially, it requires that the plaintiffs, before they can file their own civil suit, that they have to sue for relief under the act. They have to first file the complaint with the board meeting the requirements of subsection 31(c) and that the board must have denied the request for relief. And then they have further appellate appeals that they can pursue.

But regardless of all the various steps they have to undertake, they have to show that they did that in order to maintain their private cause of action. And there's not a single piece of evidence by either the Pattersons or Ms. Rice that they did do that.

We also, Judge, believe that the memorandum that Mr. Budin filed should not be considered. It was 57 pages. It was in addition to the response brief that he filed. And again, maybe there is some quirky law that allows that. But I have not seen where someone

files a memorandum in support of their response brief. So with that, I will rest until the plaintiffs have had their time with you, Judge.

THE COURT: All right. Go ahead.

MR. BUDIN: Ready, Your Honor. John Budin. I'm thinking of changing my name spelling-wise to B O U D I N because I think then Mr. Crawford pronounce it correctly.

Judge, number one, a plain reading of this --

THE COURT: That's related to Tolstoy, sort of.

MR. BUDIN: Oh. No. Just as far as our memorandum.

THE COURT: 57 pages.

MR. BUDIN: Your Honor, you said to write for your audience. You're my audience. I wrote that for you. Second --

THE COURT: Then you don't understand your audience because that is not me. It's the opposite of me.

MR. BUDIN: Second --

THE COURT: I'll address that later. Okay. Please. I don't want to interrupt you. Go ahead. I'm trying real hard. I'd really like to give and go. But

I'm trying real hard to sit way back here. Okay. I'm sorry.

MR. BUDIN: Just briefly, defendants asked for additional time after I filed the memorandum, and I said no objection. They got a few extra weeks to answer it. So now, they're saying not to consider. Well, we gave them time to do that, and they had not done so.

The memorandum, I broke it down in this section so you can look at -- any issue that has come up in this litigation is addressed in the memorandum. But more important, Judge, I'm looking at 2-619, and I believe this motion is 2-619(a)(3). If I'm not mistaken, that's what it's based on.

THE COURT: I would go to the duplicative argument.

MR. BUDIN: Yes. The majority of their argument is based on the duplicative argument. Looking at their motion, Your Honor, I don't see the word pending, P E N D I N G, anywhere in their motion.

THE COURT: But it's in the statute.

MR. BUDIN: And it's in the statute. The word that is not in the statute is the word duplicative. So before you can even consider their motion, the second motion to dismiss, we need to determine if there is

another action pending. I went back to my Black's dictionary whether it's 1st edition or the 11th edition. And the word pending is the same as Webster's definition actually. It says, "Remaining undecided. Awaiting decision. Throughout the continuance of. During." Well, if the state's case is no longer pending, what are we speaking about today?

2-619(a)(3) does not apply. There is no pending case at this time. That case was dismissed in December of '18 pursuant to a consent order. The statute is clear. This hit me upside the head about two weeks ago. There's no other action pending. The word pending is not mentioned. Duplicative is throughout their motions. Duplicative. Duplicative. I don't see the word duplicative anywhere in 2-619 under any section. One through nine, the word duplicative is not there. So why would 2-619 even apply? It doesn't apply. The motion should be dismissed with prejudice.

THE COURT: For the last time, I tell the young lawyers that if there's a statute, you might not get to go any further. So go ahead.

MR. BUDIN: Okay.

THE COURT: Another rule they tell new judges.

MR. BUDIN: And they are not duplicative in any

way, shape, or form. The defendant's motions, for lack of a better word, I think it's intentional ignorance of the underground storage tank laws in the State of Illinois. They never mentioned LUST.

And for the record, Mr. Court Reporter, LUST is L U S T, and I'm referring to leaking underground storage tank laws found in 415 ILCS 5/57.

THE COURT: Isn't that part of that whole big EPA statute?

MR. BUDIN: Yes. We are dealing with Title XVI of the EPA, the Leaking Underground Storage Tank Act. Nowhere -- let's assume the state's case is still pending today. Let's just pretend it's still pending. That lawsuit filed by the state as a result of the continued noncompliance by Marathon Speedway consists of four counts. Count one is the ex parte injunctive relief allowed under 415 ILCS 5/43(a).

Second count is civil penalties 5/42(a). Count two, air pollution. Air pollution is found in Title II of the EPA. Violations of air pollution by any person subjects them to punitive damages under 5/42(h), as I've said in my motion for punitive damages as a matter of law.

Count three of this state's case comes form

Title III of the EPA. And again, that's water pollution. And again, people who violate the Water Pollution Act, which is found at 415 ILCS 5/12(a), are also subject to punitive damages, just as are people who violate our air pollution standards, as well as the LUST Act.

Count four of the state's case comes from Title IV -- I'm sorry. Title III again, the water pollution statute. Count four of the state's case is titled, "Creating a water pollution hazard." And that's based on 415 ILCS 5/12(d).

Nowhere in the state's case is the LUST Act referenced. Nowhere in the state's case do they ever discuss or even mention Title XVI of the EPA, which is the leaking underground storage tank, which is the basis of counts one, two, and three of Rice's First Amendment complaint.

For the record, the original complaint was amendment complaint. We are now dealing with the First Amendment, which the court allowed subject to these two motions to dismiss as being adjudicated by the court.

But going back to the statute, what pending case are defendants referring to? If it's the state case, we know that as been pending for nearly three

years. So 2-619, by its very terms, defeats their motion, and it should be denied with prejudice because there is no other action pending between the same parties for the same case.

And again, if we want to pretend or assume for the sake of argument the state's case was still pending, clearly, they are not duplicative. They are entirely different. Based on similar facts at certain times, but definitely not duplicative.

Defendants again are ignoring controlling law, and they're asking the court today to overrule Illinois Supreme Court precedent on whether we exhausted administrative remedies. It is simply not required, and I cite in my --

THE COURT: You say it's concurrent.

MR. BUDIN: Yes. And it's been concurrent for a long, long time and throughout the statutes that I cite in my 57-page memorandum. The word court, court clerk, judgment, circuit court are mentioned throughout. So, Judge Varga, I think you are qualified to hear this case or any other judge in Daley Center in the Circuit Court of Cook County.

So brings me to the second issue on the exhaustion of administrative remedies. The original

state case was filed in the Circuit Court of DuPage County. There are circuit courts in every county in the State of Illinois. Now, the administrative remedies obviously were not exhausted in the state case. Defendants had no objection to the Circuit Court of DuPage County hearing those cases. But now, they have a problem with the Circuit Court of Cook County hearing the LUST counts. So I don't think it's a good idea to overrule Supreme Court precedent, which I cite in my memorandum, so. Page 24.

Second, throughout defendants' motions, both the first motion on standing and this one, they make these statements of what they think the law probably -- maybe they want the law to be. But they cite no statutes in support, no case law in support of any proposition they state. For example, they claim strict liability is not the standard here under counts one, two, and three of Rice's First Amendment complaint. That's just not true. That is not accurate. It's plainly false.

Survival of the LUST Act. I addressed that issue in my memorandum for punitive damages by operation of law. Page 22 through 25. National Bank of Bloomington v. Norfolk and Western Railway. I don't

want the court to overrule that case. I don't want you to do that, Judge.

THE COURT: I'm very conservative, strict constructionist.

MR. BUDIN: Thank you. Thank you.

THE COURT: Like all the other judges on the Daley Center.

MR. BUDIN: I would hope.

THE COURT: It's a judicial joke, everybody.

MR. BUDIN: Your Honor, I'm also asking you to follow the Froud, F R O U D, v. Celotex, C E L O T E X, Corporation case from Illinois Supreme Court, which directly addresses the issue of whether punitive damages continue after the death of the injured party. And Froud definitely states the LUST counts survive her death. And again, I'm referring to page 22 through 25 of plaintiff's memorandum of law in support of our motion for punitive damages by operation of law as to counts one, two, and three.

Defendants originally asked this court, I believe back in May, that they didn't want to address the issues in our motion for punitive damages. They wanted you --

THE COURT: I thought we were holding on punitive,

aren't we? I thought we agreed to that, didn't --

MR. BUDIN: I didn't hear --

MR. CRAWFORD: I couldn't hear you, Judge.

THE COURT: Last week, I know the defense requested that. They wanted to put that off. I thought that --

MR. BUDIN: They did. They did. They wanted to put it off. They wanted to put it off, but then they addressed the same issues that are found in our memorandum for punitive damages. So what am I supposed to do? I --

THE COURT: I know. A 57-page memorandum in response. That's what you ought to do.

MR. BUDIN: That's what I did. Your Honor --

THE COURT: Good job.

MR. BUDIN: -- I'll tell you. I'll tell you, Judge. We've all been under this quarantine for 18 months.

THE COURT: It's tough.

MR. BUDIN: Yeah. Well, you know what I've done. I'm not saying I've mastered it. But if you come to my dining room, I've got 41 boxes, 41 states. I was going to give you every state's LUST Act, but I didn't do that.

THE COURT: Well, you don't know your audience, man. Wait till I'm done with my record.

MR. BUDIN: Well, the memorandum was --

THE COURT: I did an outline of the case of judges next year 2022 through an expert testimony, by the way. And I'm transitioning it into an article for the IBJ because they publish the circuit court. That's what I'm going to do among other things. Okay. Go ahead, sir.

MR. BUDIN: Okay. The answers to all the court's questions in this case can be found in the two ISBA articles that I cited in my 57-page memorandum. Those are the only two articles. Judge, there's no other authority I could find. Those two -- excuse me?

THE COURT: For a private right of action?

MR. BUDIN: For private right of action, yes. Those articles address it. And instead of reading the whole 57 pages and all the case logs cited in the statutes, those two articles are, for lack of a better word, on point. It's the only two articles out there.

You are being asked today to decide based on the statute itself whether Ms. Rice has a private right of action granted to her by the legislature. It's our position that she clearly does have an express private right of action under LUST as to counts one, two, and

three. This case law is clear. The statutes are clear. The indemnification clause of LUST makes that very clear.

THE COURT: Well, it's clear that there's a private right of action.

MR. BUDIN: Excuse me?

THE COURT: You said the case law is clear.

MR. BUDIN: No. I said the --

THE COURT: Yeah. A right of private action.

MR. BUDIN: Yes. She does have an express private right of action under -- excuse me?

THE COURT: The case is clear. You said the cases are clear.

MR. BUDIN: The cases are clear that people do have private rights. The EPA itself, the preamble to the EPA makes that clear, as well. There is no case law on this, Judge. You're addressing an issue that's not been addressed.

THE COURT: There are cases as to whether or not there's a private right of action under the Illinois EPA statute. There's cases. There's several --

MR. BUDIN: Yes.

THE COURT: -- cases, by the way.

MR. BUDIN: Yes.

THE COURT: I thought you agree with me as I don't -- and I didn't do all the research like you lawyers do. But I'm unaware of a personal injury case. Okay. Go ahead.

MR. BUDIN: There are none. All involve what we call a corrective action. The indemnification clause found in LUST talks about corrective actions or indemnification cases such as for bodily injury.

THE COURT: And corrective actions.

MR. BUDIN: In all the cases --

THE COURT: Establish a private right of action.

MR. BUDIN: Yes.

THE COURT: How do you establish a private right of action? How do you prove it?

MR. BUDIN: In this case?

THE COURT: In all cases.

MR. BUDIN: Well, in this case, we had to prove that Marathon Speedway owned the underground storage tanks in question.

THE COURT: No, no, no. There are factors. There's four or five factors that you must establish to establish a private right of action under a statute.

MR. BUDIN: Right.

THE COURT: There's four or five. Most cases say

four. One older case says five. There's five factors. You have got them all, sir.

MR. BUDIN: Right. And I don't know if it also has to do with an implied right of actions, Your Honor, or an express. I think --

THE COURT: Well, I don't --

MR. BUDIN: Implied.

THE COURT: If you want to point out where it expressly says on the statute, I guess you're exactly right. I was speaking specifically about an implied right of action.

MR. BUDIN: Okay. The Sawyer Realty Group case.

THE COURT: Yeah. That's one. That's an old one.

MR. BUDIN: Yes. And that's still a good law, and I cited that on page 37 of our memorandum. But that has to do with the implied private right of action. And they do list the factors there. In the other cases, I --

THE COURT: Where? Oh, damn it. Go ahead. I won't interrupt.

MR. BUDIN: But we believe it's an express right of action based upon the definition --

THE COURT: Where is it express? You can't keep concluding. I hate conclusions and expert this, this,

this. Conclusion, conclusion, conclusion. You can't keep shouting at something to change it. I don't see express. It's not in the statute. It's not in the statutes.

MR. BUDIN: The definition of --

THE COURT: Implied. Okay. Okay. Implied. You can argue it. I don't see express. It ain't there. Just because you --

MR. BUDIN: The --

THE COURT: -- yell at it all you want it's express don't make it express. It's not in there.

MR. BUDIN: The definition of bodily injury is in there.

THE COURT: No, man. I've read all that. So what? That's not express. Okay. Go ahead.

MR. BUDIN: Okay. Well, I already mentioned if it's not an express private right of action, then it is an implied right of action.

THE COURT: So what factors? Where are they? You got to prove four to five factors.

MR. BUDIN: Yes.

THE COURT: I won't ask you anymore. But I did --

MR. BUDIN: I, I know. I know what you're speaking of. I just can't find the --

THE COURT: Mr. Crawford, go ahead.

MR. BUDIN: Well, we have established that. I'm going to be relying on our brief.

THE COURT: Okay. Let's wrap it up, okay? It's about 10:36 for the record, okay? And maybe we started a little late. I like to relax and then go ahead. Help me. But you want to reply? I didn't read all this stuff. But you're saying Patterson's identical to Rice. I mean, I've showed you Rice. And I've got to that brief, okay? I'll tell you. So no. I got it. Oh. So --

MR. ZALUZEC: If I may speak.

THE COURT: You have to reply. His argument exhausts his -- concurrent in the other case, is that it's concurrent jurisdictions. See. I read that. And the kicker, don't read the statute. Sounds like the Wizard of Oz. Ignore that man behind the curtain there. We got the statute 2-619. It says pending right in the statute. Ignore the man behind the curtain. What? I'm not supposed to look at the statute? So what he's saying, Mr. Budin, "Look at the statute." It's got pending in there. Well, I'm not going to make my record until the end. Okay. So, right, Mr. Budin? Two of his strong arguments on that. You want a quick reply on

that?

MR. CRAWFORD: I do, Your Honor. But I think Mr. Zaluzec would like to --

MR. ZALUZEC: Your Honor, I would also like to point out Supreme Court Case People v. NL Industries. If you will, we'll both address the argument of exhaustion of remedies as you discussed. But I thought that relevant in the court's discussion is when they address the penalties and who may bring penalties under the act. And in the terms of NL Industries, it's --

THE COURT: I hate to interrupt. I hate to interrupt. That is a compliment to all of you. That's why you're so much smarter than me, and I just argue. It's like you're taking off. I'm holding on to your toenails, okay? You're soaring up there, and I just can't follow this twisted logic, okay? While I'm not as smart to keep up with you, I just have a right to interrupt you. I interrupted everybody.

MR. ZALUZEC: Please.

THE COURT: Now, I'm done. Go ahead and make your record about this, okay? But I'm just not that smart. I'm slipping off your bearing. You're flying up with wings with all these arguments. And I'm going to tell you what the issue is at the end. I'm going to base my

ruling on it -- on these arguments. So go ahead. I won't --

MR. ZALUZEC: Thank you, Your Honor.

THE COURT: That was my interruption. I interrupted everybody. Okay. Go ahead. I'm done.

MR. ZALUZEC: It says specifically that section 22.2(i) makes no reference to which state body of government must file an action to recover costs of cleanup in an action initiated by the agency. No reference is made to which party should bring actions to recover punitive damages.

Likewise, 42(d), which refers to recouping civil penalties state that such penalties may be recovered in a civil action without specifying the party which may file such action. In there, the court interpreted that there are no limiting terms in who may bring those causes of actions. Thus, they reference the state's attorney is not limited there, but it does not limit a private party, as well.

I just wanted to bring that up. That's Supreme Court Case People v. NL Industries LEXIS --

THE COURT: I know. Mr. Budin dared me to rule against the Supreme Court. Okay. Okay. Is there anything else you'd like to say? No, no. I don't know

how to pronounce this. Zaluzec? Zaluzec?

MR. ZALUZEC: You got it. And then additionally --

THE COURT: Sorry. I forgot who you're representing. But go ahead.

MR. ZALUZEC: Additionally, in terms of the strict liability claim that there's no imposition of strict liability, the Illinois Supreme Court has stated in its holding in Central Illinois Light Co v. Home Insurance that -- and I believe Mr. Budin has this cited as well -- that section 22.2(i) does, in fact, impose strict liability. I can't find where in Mr. Budin's response that he has that. But I know that it is cited. But if not, I could provide that.

But it is in no uncertain terms does the court interpret that section of the act to impose strict liability. And that is LEXIS 2004 Illinois LEXIS 2033. Thank you, Your Honor.

THE COURT: Okay. Sorry. It's so dry around here. Hardly anybody at the Daley Center. Okay. But there are some very, very hardworking judges. One accepted a four-week case. One accepted a five-week case. So you got some good judges. So okay. And I'm just helping my neighbor because I'm a -- so there's

some good workers around here, so. Okay. Do you want to quickly reply?

I just set up a hearing a week after this. But I don't have to address it real quickly. They can wait. I'm trying to settle it. This is about the second or third time. They were with me yesterday, and I decided I'll try to sneak in later today, okay?

So do you want to reply to their arguments about the current jurisdiction? I'm really interested. I'm really listening. You got my attention, Mr. Crawford. I feel like the Wizard of Oz and say, "Ignore that man behind the curtain." And you're going to tell me, "Don't look at the statute that says pending." Come on now. Let me hear it, Mr. Crawford.

MR. CRAWFORD: Okay. Judge, even if you go with, "They have to be pending at the same time," they were pending at the same time at one point. And then the state's action did resolve. We don't dispute that. But even if you get away from the fact that they have to pending, there's two things that I just want to point out.

One, with respect to Margaret Rice. There's nothing in the survival statute that says that this action does survive, that the statutory claims under the

EPA statute survived.

The second thing that I would point out, with both respect to Rice and the Pattersons, is that they haven't demonstrated anything to show that they have exhausted their administrative revenues. And without that, they can't maintain these actions, whether this is pending at the same time as the state's action or not. And --

THE COURT: They don't happen because it was concurrent jurisdiction. So I can just go right to the circuit court.

MR. CRAWFORD: And Judge, if you go to the DuPage County action and you're going to rely on that, it is collateral estoppel. These issues have already been addressed and resolved in that action.

THE COURT: All right. I let you argue. Anybody else want to say anything?

MR. ZALUZEC: Me. Your Honor, I could just point out to the consent order that is cited by the defendants. And in the consent order, I have this underlined. It says specifically that this applies to nothing -- okay. The release set forth above does not extend to any matters other than those expressly specified in the plaintiff's verified complaint filed on

November 3rd, 2017, which as my colleague, Mr. Budin so clearly identified the four counts that were specifically identified in that complaint.

So the consent order actually takes that into consideration. And I just wanted to highlight that in terms of whether it has already been adjudicated or applies to any matter outside those four very specific counts.

MR. CRAWFORD: Judge, if I could have one quick 30 seconds.

THE COURT: Why, certainly.

MR. CRAWFORD: They can't have it both ways. They can't say it doesn't apply there but then rely on that to say that the administrative revenues have been exhausted. It's got to be one or the other. So if that's the position they're going to take, they haven't exhausted the administrative revenues and they can't rely on that at all.

THE COURT: In fact, when you're saying that the only relief the plaintiff can possibly have is injunctive, under the EPA, the defense is saying the only personal private action that a plaintiff could have would be injunctive relief, correct? Did I just --

MR. CRAWFORD: No.

THE COURT: No?
MR. CRAWFORD: No. I am not saying that, Judge.
THE COURT: Well, do plaintiffs in general have a private right of action for injunctive relief under the EPA?
MR. CRAWFORD: It does say that that is one of the remedies they can seek. Correct.
THE COURT: One. Okay. So it is one of the remedies. But when you're saying that, you might give that a sentence or two. You're off on all these other arguments that you're all too smart for me. But I did read them, and I read your cases, so. When you say the only passable private right of action would be injunctive relief, so if you're saying that, you're saying that plaintiffs don't have a private right of action under the Illinois EPA Act, correct?
MR. CRAWFORD: No. They do have. I acknowledged it on the record. I stated that they do have a right to seek damages under 415 ILCS 5/42. One of the reliefs that they can seek is injunctive, but the others are statutory damages.
THE COURT: Okay. Tell me about the statutory damages.
MR. CRAWFORD: Well, in the state's action, they

sought damages under 415 ILCS 5/42. And as part of the consent order, there was a payment made pursuant to the consent order of $75,000. What the plaintiffs are also seeking is under that same statute they're seeking relief. Now, they try to couch it by saying, "Well, we're also seeking damages under LUST." Well, LUST is part of the EPA. And 5/42 is the section that tells you what relief that either the state agencies or a private citizen can obtain. And they're seeking the exact same relief.

THE COURT: Okay. I get it. But I thought this case was all about personal injury. I thought this was a personal injury case.

MR. CRAWFORD: It is a personal injury case.

THE COURT: Got to compensate for the personal injuries claim with the plaintiffs, right?

MR. CRAWFORD: Oh, they're bringing this more like a qui tam action, Judge.

THE COURT: Okay. I didn't hear that.

MR. CRAWFORD: They're bringing this more like a qui tam action. They're trying to step into the shoes of the state.

THE COURT: Mr. Budin, are you asking for personal injury damages? Isn't that your case?

MR. BUDIN: Yes, Your Honor. Yes. Of course. We are asking for damages --

THE COURT: Mr. Crawford is saying, "No, this is a personal injury case."

MR. CRAWFORD: Judge, that's not the --

THE COURT: Oh, Judge. She was injured and then --

MR. CRAWFORD: No, Judge. That's not the relief that they're seeking. If you look at the wherefore provision of counts one, two, and three, they say that they are asking for a judgment in their favor for violations of the act and they request all damages and remedies allowed pursuant to the act and LUST. Period.

I mean, well, there is more. It says, "In excess of the minimum jurisdictional amount." But they're not saying for her personal injuries. They're asking for damages pursuant to the act. There are other counts, the survival counts, where they're asking for damages for her personal injuries, but not on counts one, two, and three.

THE COURT: Mr. Budin. Okay. Would you want to address that?

MR. BUDIN: Your Honor, counts one --

THE COURT: Yeah?

MR. BUDIN: Counts one, two, and three of plaintiff Rice's First Amendment complaint, we are seeking damages as a result of the violations of the Leaking Underground Storage Tank, Title XVI of the EPA. It is our position that the statutes involve financial responsibility, subrogation, indemnification.

And the other statutes I cite, including through Gasoline Storage Act, which administers the LUST Act all have specific provisions for both corrective actions which is what Mr. Crawford is speaking of, but they also have separate provisions for bodily injury as a result of someone being injured due to a leaking underground storage tank.

That is found in all the statutes. Every statute deals with two areas of Leaking Underground Storage Tank: corrective actions, which are usually prosecuted by the state, either the attorney general or local state's attorney's office --

THE COURT: Got it.

MR. BUDIN: -- and second, bodily injury. It's just a rarity. It is extremely rare for anyone to be injured as a result of a leaking underground storage tank. It --

THE COURT: Okay. Now, let me ask you. Okay. I

don't need a long, long, long thing, okay? So you're saying, okay, so the request for damages are corrective actions and also bodily injury.

MR. BUDIN: Yes. Yes.

THE COURT: And both are under the Illinois EPA.

MR. BUDIN: Yes.

THE COURT: Mr. Budin, I'm trying to say, isn't the issue as to whether or not the Illinois EPA creates a private right of action under the Illinois EPA statute, be specific what we just said, for corrective actions and bodily injury?

MR. BUDIN: Yes.

THE COURT: Isn't that the issue on this case?

MR. BUDIN: Yes. That is the issue.

THE COURT: Mr. Crawford, I don't know why we're going off on all these areas.

MR. CRAWFORD: Judge, this is the first time I'm hearing this. If you look at their --

THE COURT: Mr. Crawford, let me tell you something I told you earlier, okay? Sometimes lawyers, they go -- I'm not against it. That's your job, okay? You're smarter than I am. I try to find out what the issue is. I cut through all the words. Let me tell you something. This is a joke here. Ready, Mr. Budin?

MR. BUDIN: Yes, Your Honor.

THE COURT: If somebody takes 57 pages to tell me something's in there, it's not in there. Do you get it? If it takes you 57 pages to tell me, "It's in there, Judge."

MR. BUDIN: It is.

THE COURT: Takes you 57 pages to say it? That's your audience you're dealing with, Mr. Budin, okay?

MR. BUDIN: Your Honor --

THE COURT: All right. Okay. So go ahead, Mr. Budin. Go ahead. I was cutting you off. Go on.

MR. BUDIN: I appreciate what you said, Judge.

THE COURT: That was a joke, but that's my position. That's your audience. Get to the issue. What's the issue? The issue on this case is whether you can bring a private right of action under the Illinois EPA statute and for your damages for corrective actions and beyond. Is that the issue? Why are we going in all these other directions?

MR. BUDIN: The issue is whether --

THE COURT: Mr. Crawford, why do you keep saying that ain't the issue?

MR. CRAWFORD: Judge, that's not what he has in his complaint, and that's not what he put in his

response brief. And so, Judge, if you --

THE COURT: I just asked him what's in his complaint. I read the complaint.

MR. CRAWFORD: The complaint does not include that, Judge. I can point to you the paragraph. If you look at paragraph 391 of count one and then the wherefore provision, they're asking for damages under the act for LUST -- or under the EPA Act throughout all of the 220 paragraphs.

THE COURT: I hate to cut you off. But they're asking for a private right of action under LUST.

MR. BUDIN: Under LUST.

MR. CRAWFORD: They are asking for it, Judge. But they are asking for the violation of the statute with respect to the fact that it leaked and that we didn't do X, Y, and Z.

THE COURT: Well, so I could never make it. You're in that silk-stocking firm. It's like, "Oh, come on." It's a joke. I'm joking. I know you don't like my style points. I'm not into style points, okay? I'm not out to make everybody happy, all right? I think everybody's a bore, to be honest with you. Give me a personality once in a while.

I don't know how you're avoiding this, okay?

Okay. I'm done. I'm making the issue, okay? I'm the judge. The issue in this case is whether or not the Illinois EPA statute provides a private right of action. That's the issue in this case, okay, not these hundreds of pages, all these topics and issues you're taking me on. That's the issue. I'm cutting through all the legal BS, all your words, okay?

That's in general, okay? That's in general. Then in this particular case, what Mr. Budin is saying, is through a private right of actions, private cause of action he wants to corrective actions or money therefore -- what's ever in the statute. But there's also bodily injury, okay?

So that's the issue. I don't care what you're saying. I got one question. When I was doing study, I read somewhere that the EPA was found unconstitutional for the single-subject rule. What did you hear about that?

MR. BUDIN: Yeah. Yeah.

THE COURT: What's that all about?

MR. BUDIN: That actually happened. Here in --

THE COURT: But then they passed the subsequent --

MR. BUDIN: Yeah. And then the subsequent decision, Judge, by that same judge, he issued

subsequent decision. And he didn't even mention the earlier one. But yeah. That's still out there. But the judge corrected himself. Yes, Your Honor.

THE COURT: Oh, so it's not unconstitutional.

MR. BUDIN: No. The judge corrected that. Yeah. That's true though. I saw --

THE COURT: This is a federal judge.

MR. BUDIN: No comment.

THE COURT: A little joke. A little joke. They don't like me in the federal court. They won't let me go there. Hold on. Here's the deal, okay? So I'm going to read this, okay? I'm not going to be here next week. That's why. I know you wanted a ruling, okay? So I got you in today. I let you argue. I didn't follow hardly anything. I made the issue, which is the issue after up for which your 57 pages listed.

Mr. Crawford, I know it's not. But you're trying to knock out the EPA counts, right, Mr. Crawford? One, two, and three, and basically saying, "The plaintiff can't come with an action under the EPA statute." You want them thrown out. Is that what you --

MR. CRAWFORD: Correct. We do want them thrown out.

THE COURT: Okay. So I'm adjusting something. Okay. So that's what it is. That's the trick. Besides all these words on these arguments, they're going over there I thought that the defense position is we want to throw one, two, and three. Those are the EPA counts. And the plaintiff can't bring an EPA count. That's Illinois steam, the Illinois justice, these agencies, these departments, these regulations for environment, all that stuff, okay?

Okay. So I'm going to read this, okay? So what I'm going to try to do is I'll try to -- this is a draft. I know Lassett (phonetic) did this once. Some other judges might do this. But I'll try to get a final form out. I got them mostly for Rice. I can put in Patterson. But they're identical issues and cases.

So okay. So everybody's sitting down because nobody argued this. Okay. You didn't argue the cases, and you didn't argue the factors you're supposed to argue. I talked to a judge. This is an ethical question. I contacted a younger judge who I respect, and I says, "What do you do when the lawyers are taking you here, there, and there? They're not on the issue and --" because we have to be impartial. We can't take sides in our judgment.

So I talked to another judge, and she was good. She says, "Judge, you always do what's right. You do the law. You do what's right to protect my reputation." I don't try to make lawyers happy, okay? So this is my ruling. Nobody did it. And tough. And I'll try to get you a written order, okay?

I know there's a court reporter, okay? What time is it? Nothing on here. Oh, did you want to argue statute of limitations, Alexis?

MS. KARKULA: I'm sorry. No, Your Honor. I was actually supposed to argue the EPA counts. I think Tom actually has more of a handle on the statute of limitations arguments because they pertain to the motion to dismiss that was argued on the 23rd.

MR. CRAWFORD: Judge, the argument is simple. It was filed more than one year after her death, Margaret Rice's death.

THE COURT: Yeah. No. The argument is really simple. It's the same with transaction or occurrence. It's what it is, right? Come on.

MR. CRAWFORD: I figured you'd say that, so.

THE COURT: You've been arguing, man. In duplicate, you said, "It's the same LUST spot occurrence." You argued that, Mr. Crawford. And that's

the basis of relation-back. It's the same thing. Okay.

MR. CRAWFORD: It's not the statue of limitations?

THE COURT: What?

MR. CRAWFORD: Statue of limitations? It's a Seinfeld reference.

THE COURT: I don't know.

MR. CRAWFORD: I tried. It's a Seinfeld reference. It didn't work.

THE COURT: Yeah. I noticed it. So that's what I'm saying, okay? See? Know your audience, okay? You can do this with the smarter judges, okay? I can't keep up with you, all right?

All right. So okay. Well, this cause is coming on call defendant's motion to dismiss counts one, two, and three of plaintiff's First Amendment complaint. I got that. Parties having received due notice and the judge advisement promises, it is ordered that defendant's motion to dismiss is granted because the EPA statute does not provide for a private right of action. Here I go.

The Illinois EPA statute does not provide for a private right of action, not as expressed. Against plaintiff's argument for an implied private right of action, this court follows the reasoning in

Chrysler -- and you'll get the cites, okay? I don't want this, okay? I'll read it. 97 F.Supp.2d 877 2000 which was followed by Great Oaks v. Begley Company, B E G E L Y (sic), 2003 US District LEXIS 3186 and Norfolk Southern Rail Company v. Gee Company, G E, 2001 US District LEXIS 10784.

The Chrysler opinion cites three cases that disagree. Krempel against Martin Oil. K R E M P E L. That's 1995 Westlaw 733439. Midland Life Insurance Company against Regent Partners 1996 Westlaw 604038, and Singer v. Bulk, B U L K, Petroleum 9 F.Supp.2d 916, and one that agrees, Browning Ferris Industries against Maat, M A T, 1996 Westlaw 535539.

This court finds the three in disagreement less persuasive, okay? Those are older cases. The ones that I relied on was Gettleman (phonetic). It was Kohlmeyer (phonetic). And it was by -- oh, the nice one who used to be in ASA. I know him, but his name escapes me. But those are the more recent cases, okay?

Oh. And by the way, it's not 57 pages. I think it's a page and a half. As summed up in Chrysler, "This court concludes that if faced with the question, the Illinois Supreme Court, like the NBD Bank court, would conclude that the existing legislative scheme,

which provides for enforcement by the state as well as citizen's suits before the board, more than adequately serves the purpose of the statute and that the statute is not ineffective absent an implied right of action."

Chrysler 97 F.Supp.2d at 881 citing Fisher, F I S H E R, against Lexington Health Care Inc. 188 Ill.2d 455, 460, 464, 1995. That dealt with the Nursing Home Care Act citing Abbati (sic), A B A T I, v. -- oh, boy -- P A R A S K E V O U L A K O S, 187 Ill.2d 386, 395, 1999 that dealt with the Lead Poisoning Prevention Act on the City of Chicago.

And then this is interesting. There's four or five factors, okay? And then those are basically the third and fourth. And you have to have all four or five to establish an implied right of action. In an analysis of the factors required to establish an implied private right of action, this court notes that the purpose of the EPA statute is to protect the environment and minimize environmental damage.

Chrysler 97 F.Supp.2d at 880, citing NBD Bank 292 Ill.App.3d at 697, citing 415 ILCS 5/20(b) and (o), those are very -- that's a conclusion, the environment and minimize environmental damage. But if you read that, that's more like waste management and the

agencies for that. So that's a nice conclusion of a description of it.

So that's the purpose of the act, okay, which is very important when you analyze the four or five factors and look at the purpose of the act. The purpose of the act is for the environment, okay? We're talking about an implied private right of action, you know what I'm saying? So read the cases.

Now, this is interesting. This court, however, is not addressing the first factors of -- you only need four. If you want me to, I will. Think about it. At this stage of the proceedings because two of the factors match the inquiry to determine whether Illinois Pattern Instruction Civil 60.01 would be given during the trial, see, what the plaintiff may still want to do is use the statute as evidence of wrongdoing whether it be negligence or a willful one. Generally, it's negligence, okay?

So that's why I put that in there, but you're still doing discovery. I'm not the trial judge, but I don't know if the plaintiff may have -- I'm assuming the plaintiff's going to get an opinion witness or an expert. And the plaintiff may try to get in the EPA statute. And if you do these types of cases, that's

what plaintiffs do, and many times successfully. I'm not saying the Illinois EPA statute. But I'm saying other statutes' regulations state I got an expert to use it as some evidence of negligence. That's 60.01, okay?

So that's what would be given during the trial: whether the plaintiff is within the class designed to be protected by this statute and whether the statute was designed to protect against the type of the alleged injury. Do you see why I mentioned the purpose, okay? Got to give a purpose.

But that's what I'm saying. Maybe the plaintiffs could do that. I don't know. It's still a little early, but still got a lot of work to do. Okay. Now, this court also reviewed cases with other Illinois statutes. Rodgers against Saint Mary's Hospital, 149 Ill.2d 382. That's the X-ray Retention Act. Corgan v. Muehling. Yeah. M U E H L I N G. 143 Ill.2d 296. That's the Psychologist Registration Act.

Well, we know. We mentioned that. And Sawyer Realty Group. Oh. Go after the -- find out. Let's try that. The 89 Ill.2d 379 Brokers Licensing Act. If we had time to jaw, you could see why those last cases went on. You got a plaintiff who's treating, let's say, with a psychiatrist. Right? Or there's X-

ray involved with this plaintiff patient, okay? But that's for another time, okay?

I'm almost done. I only did a page and a half. I just pooped out. I tried to get to two pages, but I just couldn't get it there. Further, disagreement -- oh. I don't want to put that in there. See? I'm trying to be nice, everybody. Let's take that out. We don't need that. Further, the wording of section -- oh, no. This is pending. Hey. I did that. Okay.

Further, the wording of section 2-619(a)(3). I'm letting these people in, okay? Okay. Specifies -- here it comes, Mr. Crawford -- "pending." This is interesting. Let's do this. I read the case, and you don't shimmy-shammy me. The consent order is not pending. Let me finish, okay? Let me finish. The case is cited for the purpose or design of the section all involve -- look. And I read your cases. I'm going to cite them. Okay. The case is cited for the purpose of design the section all involved pending actions.

Good distinction. Listen to this one. And the interpretation and application of the section to the facts of those cases. There was Schact, S C H A C T. Just plaintiffs' names. There was Overnight, O V E R N I G H T. There was Kapoor, K A P O R. And then there

was Kellerman, K E L E R M A N.

Now, these were the main cases. I didn't read all of them. But these were the babies that you keep on referring, and you're like, "Refer to. Refer to. Refer to." You've got to give it to me with these, okay? Well, I happened to read them.

Okay. Now, listen to this one. Although the Ryder, R Y D E R, opinion slips in the word pending -- those justices -- the facts of that case are distinguishable. Oh. I got an I there. I got to check on the final -- okay. Oh, no. Ryder involved a past consent order that was still in effect and to be in effect into the future. The consent order was pending for the parties, get it? It was in the past, but it was still pending. Very clever.

Now, the court also disagrees with defendant's statute of limitations argument: the amended complaint relates back because the allegations arise out of the same transaction or occurrence. We all know that. The underground storage tanks leak in the sewer system. I looked at the statute, and that long Tolstoy complaint. That's so long. Okay.

The Illinois Circuit begin. It starts. Now, in light of the above rulings, other arguments need

not be addressed. You had so many arguments. You know what I'm saying? There's only one issue, so I don't got to go all those. All right? So ain't that something. All those cases, that's the law. The issue was whether or not the plaintiff can bring a private right of action under the Illinois EPA statute.

I had found cases. The most recent case is from the Northern District of Illinois. Parmeyer (phonetic), it has three judges, and they all said no. They had reasoning. The older ones, one was a conclusion. No. You can't. I guess you can't. So they were really bad opinions. And then they applied that factoral approach, which I did. And for summary, I didn't want to get into the plaintiffs and the class of the plaintiffs' injuries, the two factors, because it wasn't a 60.01. I mean, you can figure it out.

I just told you what the purpose of the EPA statute is for all the titles. It's all about the environment. And if you read specifically, it breaks it down. Waste here. This, this. Regulatory steam. But it's all about the environment and changes to the environment.

And that's it. All right? So I don't know. I'll try to get that order through. I don't know when I

can do it. I got a full morning tomorrow and maybe Friday, in fact. So the point is if I can get it done by Friday, I might be able to get it -- oh, now, I'm doing a jury trial. Now, I'm gone for a week. Okay. And then you'll have to wait a week. But that's why I read it to you, okay? Okay. Is there anything else?

MR. BUDIN: Your Honor, I would just ask you to -- this case is brought under article -- or Title XVI of the EPA. You can say it's still the EPA, but it's brought under that separate title, Underground Storage Tank. And it's our position that there is at least an implied right of action. I'm aware of the Chrysler case and those three federal cases you spoke of. None of them involve bodily injury from a leaking underground storage tank. I'm very familiar with them.

THE COURT: Okay. That's fine. Give me some help. Here's my reasoning, okay? Here's my reasoning. I got cases with reasoning, and you admitted you are asking for corrective action, okay?

MR. BUDIN: No, I'm not. We never did. We are not asking for corrective action.

THE COURT: You just said it early in the hearing. Come on. Come on. I asked you, "What are your damages?" You said, "Part corrective action and part

BI."

MR. BUDIN: No, Your Honor. I said there's two types of actions, there's corrective actions and there's indemnification cases. There's corrective actions.

THE COURT: Okay. I'm done. Okay. Maybe you're right.

MR. BUDIN: We've never asked for corrective action.

THE COURT: Let me finish. You can make whatever you record, okay?

MR. BUDIN: I understand. We never --

THE COURT: I did great research despite what I was given, okay? And the issue is whether a private right of action can be brought under the Illinois EPA. I may not have a case on point as Judge Varga defines it. But what I do is I try to get similar cases --

MR. BUDIN: Right.

THE COURT: -- regarding our statute which is the Illinois EPA Act, and the issue is there a private right of action to it. And no, no, no. And I'm saying I can consistently move forward with that basis and apply the reasoning, which is different, to this set of facts.

That's my analogy. I have very recent cases. They say, "No, there's no implied right of

action under the Illinois EPA Act." I got three recent cases. I am applying those holdings, different facts, to the facts before me, okay?

With all due respect, you didn't give me anything. A lot of arguments. I'm not as smart as you. I told you, I'm not as smart as any of those (indiscernible 01:15:01). Got to cook it for me. I can't follow the detail. And I did start to read that, but I couldn't get to 57 pages, to be honest with you. It's a little long.

MR. BUDIN: I did discuss the NBD case which --

THE COURT: I know you did.

MR. BUDIN: -- is what --

THE COURT: That's maybe where I started. You know what I did, everybody? I identified the issue first. What's the issue? Let me tell you how easy this is, everybody, despite what happened. And he's a heck of a judge. What I did was I'm reading all this stuff. You're sending me to Timbuktu. You're sending me over here. You're sending me over all these cases. I needed more time. So I read all this stuff. I got boxes here.

What's the issue? I told you what the issue is. Can the plaintiff bring a private right of action under the Illinois EPA Act on the facts of this case?

Boy, was that hard. So you know what I do? Natural language search. I punch in. Was it a private right of action under Illinois EPA Act? Bingo. The cases start falling out out of the Northern District of Illinois.

Again, I prefer Illinois. I prefer close districts. You take what you get. I read them. And then what? The older cases, they had no reasoning. One was just a conclusion. They made sense. It's the same issue. I agree with you. Well, like I said, if the Illinois Supreme Court were to address it, they'd do the same thing. They'd say no with the facts of this case.

I'm just taking three cases. Step one, step two, step three. I'm just taking those first three steps and taking the final step, applying the law and reasoning from those cases to the plaintiffs in our case. It's very simple reasoning. That's why I can't take all the curves and dips that you people gave me. I'm not that smart. I can't do that. Just similar set of facts. That's what I did. I'm just explaining how I came up with the issue. Can't start without the issue, and then I told you how I solved it.

I did a natural language search, got cases. Nothing on point, as this judge defines it, I think on other cases with the same issue. So do those cases

apply to the facts in my case? I'm saying they will. They do. I believe they would. Okay. Are we done? What else do you want to do?

MR. BUDIN: Judge, I think this case is up again for argument on November 17th. We can just also bring the order for discovery status on that date, as well. I asked Mr. Crawford for a distribution contract. He sent me the wrong one. I think this time he gave it to me this week. But we got all these depositions we're going to Ohio on. I just want to make sure we -- discovery status. I think it's up 17th of November on another motion.

THE COURT: Whatever. I had to give my speech. I didn't cut you off. I did my best not to cut you off. Give me a little (indiscernible 01:18:12).

MR. BUDIN: And I'm again very aware of the Chrysler cases, Your Honor.

THE COURT: I knew that. I knew that. I know. I know.

MR. BUDIN: I'm just saying --

THE COURT: What do you got?

MR. BUDIN: They relied on NBD, right? They relied on the NBD decision. I believe they did.

THE COURT: There's a huge distinction. Boy, I

don't have it right now. It's at home. Maybe they did. At the end of that opinion, they cite the first three or four older cases. But they didn't have the benefit of two cases, okay?

MR. BUDIN: Yeah. Yeah.

THE COURT: And I don't remember. They didn't have the benefit of two things. And then the other one ruled and went through like I wrote. And then the other ones, they followed. I'll take it. It's better than nothing, and seriously it's better than what any attorney gave me here.

I mean, I got cases on the issue, and then I applied the factoral approach. None of you did. I don't get it. See? I'm not as smart as you people are. Do judges fall for this stuff? I mean, I just don't get it. I mean, that's my ruling, all right?

I'm sorry. I got no style points. So what? I'm right on the law. All right. I don't need style points. You better hurry up and take this one up. You've taken everything up on everything I do on this case.

MR. BUDIN: I haven't taken you up.

THE COURT: Well, it doesn't matter. That's why I've been writing these short opinions, so the appellate

court knows what I'm doing.

MR. BUDIN: Okay.

THE COURT: All right, gang. Hey. This case really looks nice now. Do you know how we started? And this is how the case should have been from the very beginning. You just have to give me a little time. Give me the law. I'll make my ruling. You got half the parties, half the counts. Now you get a jury trial.

MR. BUDIN: And can we include 304(a) language?

THE COURT: I don't know. What do you want to do? That's what I was going to say. You know what the defense do a lot of times? Because I'm not the attorney. Sometimes they type the wrong orders because they want to get a 304 done. Oh, yeah. And the case findings they want to bar or exclude other suits, third-party suits. So I don't do that.

This is more like a memorandum explaining my ruling now. If you need some legal significance where it's going to do an order, pass it around, okay? That's what some cases do.

MR. BUDIN: Okay. So you don't want to include it in your order. I thought you were going to --

THE COURT: If you want me to. Do you want me to put it? I'll write it in red. Do you want me to put in

Rule 304?

MR. BUDIN: Yeah. Why not? Yes, please.

THE COURT: Is anybody objecting? I mean, Mr. Crawford, you've been taking me up on everything I do on this case. How can you object?

MR. CRAWFORD: I'm not objecting, Your Honor.

THE COURT: All right. I'm going to write it in red. Okay. 304. All right, everybody. I'm just joking with you, Mr. Crawford. I know you didn't like that Wizard of Oz comparison.

MR. CRAWFORD: I love that reference.

THE COURT: I can tell the other partners in the partner meeting that I used the Wizard of Oz against you because you didn't want me to read the statute. So I used the, "Don't look at the man behind the curtain," like I wasn't supposed to read the statute. They're going to love it at the partner meeting.

MR. CRAWFORD: I'll bring it up, Judge.

THE COURT: And by the way, you can say we were successful on the motion.

MR. CRAWFORD: Thank you, Judge.

THE COURT: All right, everybody.

MR. CRAWFORD: All right.

THE COURT: Thanks for taking all the credit

there, Mr. Crawford.

MR. CRAWFORD: Didn't say a word, Judge.

THE COURT: All right. Are we done? I'll see you in November.

MR. CRAWFORD: Thank you.

MR. BUDIN: Thanks.

MR. ZALUZEC: Thank you, Your Honor.

THE COURT: All right.

(Which were all the proceedings had in the above-entitled cause.)

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

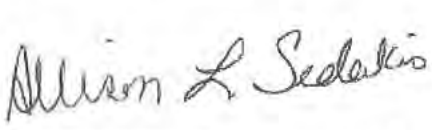
MITCHELL GIBSON, being first duly sworn, on oath that says he is a Digital Reporter doing business in the City of Chicago, County of Cook, and the State of Illinois;

That he reported digitally the videoconference proceedings had at the foregoing hearing;

And that the foregoing is a true and correct transcript of the digital notes so taken as aforesaid and contains all the videoconference proceedings had at the said hearing.

MITCHELL GIBSON

SUBSCRIBED AND SWORN TO
Before me this 18th day of
October, A.D., 2021.



NOTARY PUBLIC

CERTIFICATE OF TRANSCRIPTIONIST

I, Anne Thurmond, do hereby certify that to the best of my knowledge and belief, the attached transcript regarding the proceedings in case 2018-L-000783 is a true and accurate transcription of the indicated digital recording.

I further certify that I am neither attorney nor counsel for nor related nor employed by any of the parties to the action; further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in this action.

DATED OCTOBER 18, 2021.

Anne Thurmond

Anne Thurmond

STATE OF ILLINOIS)
) ss:
COUNTY OF C O O K)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

LAURA E. RICE, as Special Representative off the Estate of MARGARET L. RICE, Deceased,
Plaintiff,

vs.) No. 18 L 783

MARATHON PETROLEUM COMPANY, et al.,

Remote record of proceedings in the hearing of the above-entitled cause, 2406 Daley Center, before the HON. JAMES VARGA, in the City of Chicago, County of Cook, State of Illinois, before Victoria D. Rocks, CSR, Notary Public, commencing at 9:30 o'clock a.m., on the 26th day of January 2022, A.D.

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I-N-D-E-X

THE COURT: I have read everything.

MR. BUDIN: I note that you have read it all. I believe that we are just going to rest on our briefs, on our motion.

THE COURT: After all that work.

MR. BUDIN: If you have a question, I'd be happy to entertain it. But you have a jury waiting, and I think you can issue a decision based on the briefs. If you have a question, I would be happy to answer it.

THE COURT: I really don't. Does anybody want to say anything or not?

MR. CRAWFORD: No, Judge. We're happy to rest on our briefs as well.

THE COURT: And I rushed here, the train was late. I didn't rush. I am eating breakfast. I asked Emma if this tie goes with the red shirt. She said yes.

I already typed an order. So I don't know if I am going to type it, but this is a motion to reconsider the court order of October 15, 2021. I am reading from it.

The motion to reconsider is denied. I am not changing anything. It's very similar. Mr. Crawford

from that big firm Litchfield Cavo, I think we had this conversation. You're coming up with these terms that were unfamiliar. I am used to case on point. You said there's some law on point. Wasn't that one of the hearings in these cases?

MR. BUDIN: It was.

THE COURT: It's very easy. I told you this. And darn it, if people find this out, they're going to realize how easy being a lawyer is.

I told you I envision boxes. And I read everything, and I wrote your cases down. And I looked at a couple of other ones and refreshed my memory on some of this. You have a fact pattern in front of you. You read every case you can and if there's depositions, you do that too, and you're going to find out. I say boxes. I don't know.

Cardboard boxes like in the old attic. You have containers. Lawyers, I suppose you could say category or principal, but I have boxe. I said this during the ruling. I'm going to say it again.

So the facts that we have in front of us, where am I going to put it. As we all know, the law is First District and recent and all that other stuff in Illinois. This case, the first impression.

I get it.

So if you don't have that, you look for -- I think it's persuasive. You go to anybody who has dealt with it, and we found that the federal court did it. And so I put the facts of this case into the recent federal rulings on that issue. And that is what I did.

Yes, you can nitpick it's not that or this. But I'm saying it's as close as we had in the law. So then I looked at some of the plaintiff's side Davis versus Marathon. I think the defense is right. That was an instruction case if I'm not mistaken. I read it sometime ago, but I think it was an instruction case, 6001. To somebody's credit, I think it was the defense.

I don't think I ruled on 6001. That is for the jury, but what I did, there were factors there. And I found a couple of factors are similar to the fact that you consider with a 6001. So it was my interpretation on factors. I wasn't ruling on the 6001, and you know what, the next judge can disagree with me and interpret it differently from the jury judge.

It's not controlling what I do, and I didn't

rule on 6001. There's factors. Then we looked at the one case. I forgot which one it was. I won't be that long. I've quickly gone through it. Where is it.

I am just flipping through my read notes. Maybe it was in the defenses. Yes, there it is. The old Corrigan. So I told you I went with the federal. Not this, but I'm saying it was very close to what we had.

Then I look at the cases and, by the way, I found another case. Give me some credit. I mean Corrigan, come on. It was a psychologist registration. It was a relationship, psychologist, psychiatric or something and the patient, and something got between them.

The patient-client relationship, there's a statute. That ain't even close to what we got going, see. And then you cited the -- I forgot what that is. I'm going to look through my notes. I think you cited a new one. That was Corrigan. And that was Davis. Is that Pilotto? Let me see my notes on Pilotto. Farini or Pilotto.

I have my read notes here on your motion to reconsider. I remember writing notes. I just saw

the notes. There's Corrigan. I addressed Corrigan. So -- I better look up this case. And the case is about I think the lady had a diarrhea attack from eating in the restaurant or a store in the mall.

MR. BUDIN: Yes.

THE COURT: That is real close to what we're dealing with. But then you read it because you go through the four factors. And these are my notes. I don't remember.

She was reluctant to divulge the embarrassing information, and it was to pursue a petty offense with less than 100 bucks was the penalty. So this is the reasoning that the Court went in the direction that they did with Pilotto. And the remedy had nothing to do with the injuries sustained. She had diarrhea public.

So what I'm saying is I am applying these federal cases that at least address the issues, and there are some similarities to the facts. Then you give me those three cases as an example. Well, come on now. Mr. Budin, I love simplicity and direct and basic.

I'm trying to explain my thought process, how easy it is. So by God, the facts of the case are so

much closer to the federal cases that I relied on than -- you know, it's serious to have diarrhea in public. It's serious. That case, a psychiatrist and an instruction case. Do you see what I'm saying? They ain't even close.

So that is why I am going to stay with my position. I am not changing it. And yet you're a very specific fact conscious person, and you analyze and use reason and logic. But your reason and logic is very, very specific. And you take these little steps and, you know, by hooking up all those little steps sometimes I think you go in the wrong direction.

Now I'm disagreeing because I'm the judge, and I'm explaining the way I thought. You were very rational. You were very logical. You were drawing distinctions and all this other stuff and that is what a lawyer is supposed to do.

I am just saying you got the knucklehead for a judge. I can't think like that. I do it easy. This is closer in the federal cases. So that is what I did. So the motion to reconsider is denied. I made my record. I made my record to show what great discretion. Anything else we have to do?

MR. BUDIN: Real quick. You said recent federal cases. Do you mean in addition to the Chrysler?

THE COURT: No. I'm glad you asked that. I find it -- I have a higher standard. You don't have to be perfect anymore. Walk away from it.

I think we read all those cases, the federal cases. I think the more recent cases and the names are federal judges who are sitting now. Those are the recent cases, and they all ruled there is no private right of action right, I think.

If you go way back in the federal cases, boy, have times changed and so have the politics around here in Chicago. But in the older days back then some of the older cases they did find it, and I think it was Judge Marovich if I'm not mistaken. Correct me if I'm wrong. You're the lawyers. You studied this stuff.

The older cases did allow it. I think it was Marovich. I remember his name from his time in Markham. Then he went federal.

That's what I meant by the recent -- right here in Chicago, the federal court in Chicago. Then one, I forget the name, a female. That's what I

meant by the most recent federal court in Chicagoland that address the issue whether or not the Illinois EPA provides a right of action. They say no. If you go way way back, if you go back in the older cases I think at least one said yes. So that's what I meant by that.

So you think about that. The law changes, the law evolves, and you think nowadays, you know, there's always shifts in policy and attitudes.

MR. BUDIN: The most recent federal case I found, Judge, was the City of Evanston versus Texaco case, 19 F. Supp 3d, 817, 214, U.S. District, Lexus, which involved -- it discusses the issues that are present in this case.

THE COURT: You said that with all the other cases. I don't know if I could believe that. What does that case involve?

MR. BUDIN: It involves the leaking of an underground storage tank.

THE COURT: Did you cite it?

MR. BUDIN: I cited it in one of my original motions, yes, as well as the Didio versus Heston Corporation case. This essentially says the same thing. That is 887 F Supp. 1037.

THE COURT: If it's so damn important, did you cite it in your motion to reconsider?

MR. BUDIN: No.

THE COURT: If it's so important, why didn't you?

MR. BUDIN: Because I do have Illinois cases --

THE COURT: So you cite Marathon, and you cited Pilotto. And you cite Corrigan. It ain't even close.

This is what I'm saying. We have a Ying Yang or something. We do things differently, that's all.

MR. BUDIN: Okay.

THE COURT: I try right at the beginning, but as I said, I don't remember right now as we sit here. I'm not going to reread it.

You could tell I read the motion to reconsider, and I looked at the cases. I remember the name of that case. This one, maybe I read it, the diarrhea case. I don't know, and I just told you what I meant by recent and old.

As I said, there were a few that were more recent. There was an older one. And the more recent that we beat to a dead horse, and I found on the issues that there is none. Then you use it.

Not only that, for conclusion you use it to go through the factors. And we went through the factors. And we disagree.

MR. BUDIN: We disagree, that's true.

THE COURT: And you're quite the advocate. You're digging in. But you know what, you're very polite and very respectful. And that is really good because a lot of lawyers are not.

You're very respectful, and you're very knowledgeable and very well prepared. I'll tell you judges and jurors, jurors really love prepared. So do judges. And those are really big, and you are Mr. Budin. But we disagree.

MR. BUDIN: We disagree.

THE COURT: Our minds are on different tracks. You're going to Chicago. I'm going to Kansas City or something, you know. We're just on the wrong tracks.

MR. BUDIN: Well, that is why we have appeals.

THE COURT: That is why I made such a good record. So good luck all of you because all of my rulings are darn good. You read my recent appeal by the Supreme Court?

MR. BUDIN: The Doe versus Perillo case.

THE COURT: On the manlift. That just came down.

MR. BUDIN: The Doe case was interesting.

THE COURT: It was a fascinating case. How many times do they not only cite the name of the trial judge, but quote the pants off of him?

MR. BUDIN: Doe quoted you.

THE COURT: There's something else. Don't try to bully me around. Did you feel the feeling in that case. We get the old school prosecutor. He's going to handle this. He's going to handle that judge. I know how to handle this judge. I'm an old school prosecutor.

He forgot I worked there in the '70s, early '80s, 26th and California. It didn't work out, did it?

MR. BUDIN: Judge, I will tell you that in 1982 you mentioned Mr. Mike Zicaro. I was his law clerk.

THE COURT: Wonderful man. I clerked under him and Bill Kunkel. Wow, was I lucky. Talk about two mentors.

MR. BUDIN: Me too. If you came in my office, you would see Mr. Kunkel here. You'd know that he has been here.

THE COURT: I am blessed by the young people. The greatest thing that can happen in your career to be able to work under a mentor like that.

MR. BUDIN: Yes.

THE COURT: They were the best.

MR. BUDIN: They were.

THE COURT: And I clerked a couple of summers back in the late '70s when I was in law school. They even paid them. A privilege to work under those people. Tremendous.

You probably know I got to work with Bill Kunkel. What we did too, if you had time to go watch trials that's what I did. And as you all know, they were very different, their style. And that is the beauty of being a trial lawyer. They're very different and very successful. I was very lucky.

MR. BUDIN: Both great guys.

THE COURT: Are you coming back? Are we done?

MR. ZALUZEC: There's a couple of housekeeping matters in the Patterson case we'd like you to address.

First, we need to set the close of discovery and date for disclosures for February 25. I want to

have that on the record. As well as, Your Honor, we've been waiting on transcripts from depositions we took in Ohio in order to file our motion to strike 216s and get them admitted.

We were expecting them this week. If they're not to us tomorrow, we're going to go ahead and file our motion. I want to get a briefing schedule set up today so we don't have to come back and get a briefing schedule and then go through that process.

THE COURT: What is the trial date?

MR. BUDIN: On the Rice matter, Your Honor, we have a trial date of March 2nd. I will be appealing your decision today, of course.

THE COURT: You'll be appealing. Good luck to you, okay.

MR. BUDIN: Thanks, Judge.

THE COURT: I'm not being mean. I know we differ on the issue. I just don't see it. Okay, that's America and that's the judicial system. And you can appeal. Go ahead.

The other side was Mr. Crawford's office. Didn't you appeal my pants off? Didn't you take me up on two or three things?

MR. CRAWFORD: They were on the set of motions

for good faith finding settlements.

THE COURT: What about the Tort Immunity Act? That went up too.

MR. CRAWFORD: Yes. That involved the same, I believe, order itself, yes.

THE COURT: So what do you want to do? What kind of order you want?

MR. ZALUZEC: If we can include closure of the discovery and disclosure dates as February 25th on the Patterson versus Speedway matter. Also set a briefing schedule and for a motion to strike responses to 216s deemed admitted. We're going to go ahead and have that filed.

THE COURT: You're kind of dragging out. The point is this Patterson you got a trial date. What are you doing, are you appealing?

MR. ZALUZEC: We have a trial date of April 27. We want to have this motion heard prior to that. And we want to have the date set of February 25 for close of discovery and disclosures.

THE COURT: So Patterson, what about 213? Is that what you're talking about?

MR. ZALUZEC: 216. We have a motion set up.

THE COURT: I know, 216, but you're talking

about discovery and cutoff.

MR. ZALUZEC: Yes, that is February 25. All discovery is closed.

THE COURT: Okay. So you're basically done. You'll be done on the 25th, including experts?

MR. ZALUZEC: We have a trial date of April 27. It's the 60 day rule, correct, that needs to be closed prior to that?

THE COURT: I'm not here to answer questions. What do you want to do? You have a trial date in April.

I just assume you not come back to be honest with you. I've been really nice all those Covid months. And now I'm here doing this and jury trials. So what do you want? I'll sign any order you want. Do you want to agree to it. I'll sign an order.

What do you all want to agree to? I don't care as long as we put whatever hearings are on Wednesday. I am doing Wednesday morning like now because I have juries going now. I don't care. What do you want the order to say?

MR. CRAWFORD: I don't have a problem with fact disclosing on February 25, unless the plaintiff is

not going to disclose any experts, which I don't believe I've seen anything yet.

But I do think if they are going to disclose experts that we should probably push that date out a little bit.

MR. ZALUZEC: All right. As long as you guys agree with that, I am fine with pushing that date out. I am following local rules.

THE COURT: Here's what you're going to do. Do a trial date for 213 -- do a disclosure including 213 that works with your April trial date. Why don't you just do that?

MR. CRAWFORD: That sounds good. We could talk offline and submit an agreed schedule.

THE COURT: Okay. Thank you very much, Mr. Crawford. Just agree to your discovery cutoff, your 213s, how you want to do it with your trial date.

Now, when do you want a Wednesday for your 216 hearing? Is that what you wanted?

MR. ZALUZEC: Correct, Your Honor. We're going to file Friday regardless if we get these transcripts or not, assuming that they want to reply.

THE COURT: I want to end everything. I am almost done. By April, I have a couple of big rulings. But these are almost gone. We set them all and have a trial date.

Can you do the 23rd? What kind of courtesy copies can you give me?

MR. ZALUZEC: The best kind you want.

THE COURT: Give as many cases as you can.

MR. ZALUZEC: At least 14 days beforehand, if not ten days.

THE COURT: That is really good. You don't have to be that far ahead. I read it on the train. So I'm going to put this down as Patterson on 2-23, correct?

MR. ZALUZEC: Correct.

THE COURT: 9:30, Patterson.

MR. CRAWFORD: Judge, if I might make a comment on that request. The plaintiff is asking to set a briefing schedule and a hearing on a motion we haven't seen and is yet to be filed.

Depending on what that motion looks like it's hard for us to agree to a briefing schedule. We need to know what's in there and how many pages.

THE COURT: I hate to cut you off. I have to

make some rulings before we start. Do you want to do a status for that, status on the Rule 216 hearing? Do you want to do something like that?

MR. CRAWFORD: Yes, that would be fine. Then we can all work out a briefing schedule after.

THE COURT: Now, a status I don't need courtesy copies. When do you want to come in on a Wednesday morning?

MR. ZALUZEC: I would like it to be as soon as possible to get everything set. So February 2nd works for you as a status.

THE COURT: You're going to get that filed by when so Mr. Crawford can see it? Did you say by the end of the week?

MR. ZALUZEC: Correct.

THE COURT: Is that okay, Mr. Crawford, to take a look at it and let us know how much time you need?

MR. CRAWFORD: Sure.

THE COURT: Hang on. So February 2, I think I can do that. Two settlements, everybody. I thought I set something there. I'm staying away from that. This is just a status, right, 10 o'clock.

MR. CRAWFORD: That sounds good. Ideally, we'll get it worked out and submit a proposed order

for you. So it should be very quick or maybe we won't even need to have it.

THE COURT: I'm going to put you up here, Patterson.

MR. ZALUZEC: I assume it would be standard briefing schedule times.

THE COURT: Hang on. Status on Rule 216. Mr. Budin, you just want to appeal Varga because everybody else has.

Do you want to do it just to gain credibility? You don't want to appear like you're an easy guy. They're throwing punches. So you're going to counter punch. Now I don't feel so bad.

MR. BUDIN: You should never feel bad.

THE COURT: Can somebody do the order, same thing, whatever we used to do on those orders. February 2, 10:00 o'clock. A status.

You're right, work it out. I have a legal question for you. Under the ultimate issue rule with an expert, does that include legal conclusions? Can an expert give a legal conclusion under the ultimate issue rule?

MR. BUDIN: I think so.

THE COURT: I just read a bunch of cases. I'm

teaching. If I don't give you the answer you won't be able to sleep tonight.

MR. BUDIN: Judge, I always sleep well.

THE COURT: I'll tell you the next hearing date.

MR. CRAWFORD: We do have one other housekeeping matter on the Patterson.

THE COURT: What do you think I am, a maid?

MR. CRAWFORD: Well, in the sense the order on the motion to dismiss the EPA counts in the Rice matter at the beginning of the hearing we mentioned there was also a companion motion in the Patterson case.

There was no actual line in the order saying that the motion was granted. So I think that we do need to get that. We'll add that in. I want to alert you to that.

THE COURT: Yes, do that. Sorry, I forgot about it.

MR. CRAWFORD: Giving you a heads up.

MR. ZALUZEC: You'll put that in the order.

THE COURT: You're trying to slip one past me, Mr. Crawford.

MR. ZALUZEC: It would be in my favor. So I

would appreciate it if you did.

THE COURT: Are we done?

MR. BUDIN: You're going to do the order on the Rice case?

THE COURT: Am I? I don't want to do any more orders.

MR. ZALUZEC: I'll do it, but a comprehensive CFC that will include a line, your decision on this motion.

If there is a separate written order that you have for the motion to reconsider, Judge, you can include that.

THE COURT: I don't know. I've been so busy. I don't know. That is all I can say.

MR. BUDIN: If you want us to prepare an order saying motion to reconsider is denied, I can do that.

THE COURT: Why don't you go ahead and do that. I may or may not. I just told you. I just repeated myself. Go ahead. I may or may not.

Feel free to do one, and I may or may not. I might very well because everybody is taking me up. What the hell.

MR. BUDIN: We already have 304a language in

the October 15th order. We don't need that again. I'll prepare an order saying the motion to reconsider is denied.

THE COURT: Okay.

MR. BUDIN: We'll get it over to you today.

STATE OF ILLINOIS)
) ss:
COUNTY OF C O O K)

VICTORIA D. ROCKS, C.S.R., Notary Public, being first duly sworn, deposes and says that she is a Certified Shorthand Reporter, doing business in the City of Chicago, County of Cook, State of Illinois and reported proceedings in the Courts in said County;

That she reported in shorthand and thereafter transcribed the foregoing proceedings;

That the within and foregoing transcript is a true, accurate, and complete record of the proceedings had upon the hearing in the County of Cook, State of Illinois, on this 26th day of January, 2022.

Victoria Rocks

VICTORIA D. ROCKS, C.S.R.
License No. 084-002692

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

LAURA E. RICE, as Special Representative of the Estate of MARGARET L. RICE, deceased Plaintiffs, vs. MARATHON PETROLEUM CORPORATION, a Delaware Corporation, SPEEDWAY, LLC., a Delaware Limited Liability Company, and MANOJ VALIATHARA, Defendants.	)	No.: 18 L 000783

FIRST AMENDED COMPLAINT AT LAW

NOW COMES Plaintiff, LAURA E. RICE, as Special Representative of the Estate of MARGARET L. RICE, deceased, by and through her attorneys, BUDIN LAW OFFICES, and complaining of the Defendants MARATHON PETROLEUM CORPORATION, SPEEEDWAY LLC and MANOJ VALIATHARA in this First Amended Complaint at Law, states as follows:

FACTS COMMON TO ALL COUNTS

1. At all times relevant to this First Amended Complaint, Plaintiff decedent, MARGARET L. RICE, resided at 6167 Knollwood Road, Unit 106, Willowbrook, County of DuPage, State of Illinois.

2. On November 22, 2019, MARGARET L. RICE passed away.

3. On or about January 21, 2020, plaintiff was given leave to amend the face of her complaint, granting Laura E. Rice, her daughter, to be substituted as plaintiff and added to the caption as special representative (hereafter "plaintiff").

C 26299 V15

4. At all times relevant, MARATHON PETROLEUM CORPORATION, is a Delaware corporation with its principal place of business in Ohio.

5. At all times relevant, MARATHON PETROLEUM CORPORATION wholly owned MPC INVESTMENT LLC, a Delaware Limited Liability Company, with its principal place of business in Ohio.

6. At all times relevant, MARATHON PETROLEUM CORPORATION owns all of the membership interests in MPC INVESTMENT LLC.

7. At all times relevant, SPEEDWAY LLC, is a Delaware Limited Liability Company, with its sole member MPC INVESTMENT LLC, and is licensed to do business in the State of Illinois, with its Illinois registered agent in the County of Cook, Illinois, and its principal place of business in Ohio.

8. At all times relevant, defendant, MARATHON PETROLEUM CORPORATION (hereafter "MPC"), did substantial business on a regular basis in the County of Cook, State of Illinois.

9. At all relevant times defendant, SPEEDWAY, LLC. (hereafter "Speedway") did substantial business on a regular basis in the County of Cook, State of Illinois.

10. At all times relevant to this Amended Complaint defendant, MPC was, and is, an Ohio Corporation registered with the Illinois Secretary of State as a foreign corporation with active status in Illinois.

11. On or about February 3, 2016, MPC INVESTMENT LLC submitted an Amended Application for Admission with the Illinois Secretary of State modifying SPEEDWAY LLC's company management structure, changing SPEEDWAY LLC to a member-managed limited liability company, and establishing MPC INVESTMENT LLC as

the sole member. **See, Plaintiff's Ex. #1 (Secretary of State filing information, p. 31.)**

12. As the sole owner of all membership interests in MPC INVESTMENT LLC, MPC is also the owner of all of MPC INVESTMENT LLC's membership interest in SPEEDWAY LLC.

13. MPC is the Beneficial Owner of MPC INVESTMENT LLC.

14. MPC is a Beneficial Owner of SPEEDWAY LLC. **See, Plaintiff's Ex. #2, 8 pages (Marathon Petroleum Corporation Profile, from Reuters.com.)**

15. At all relevant times, Gary R. Heminger was the Chief Executive Officer of MPC.

16. At all relevant times, Anthony R. Kenney was a Named Executive Officer of MPC and President of SPEEDWAY.

17. At all relevant times, Chuck Rice was a Director of MPC.

18. On February 28, 2018 the United States Securities and Exchange Commission received FORM 10-K Commission file number 001-35054: MARATHON PETROLEUM CORPORATION's ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 For the Fiscal Year Ended December 31, 2017. **See, Plaintiff's Ex. #3 (Marathon 2017, SEC Form 10-K Report of February 28, 2018, 14 pages.)**

19. **Marathon 2017 10-K Report,** certified by Gary R. Heminger, Chairman of the Board and Chief Executive Officer of Marathon, pursuant to 18 U.S.C. §1350 reads:

> "We are one of the largest wholesale suppliers of gasoline and distillates to resellers within our market area. We have two strong retail brands: Speedway® and Marathon®. We believe Speedway LLC, a wholly-owned subsidiary, operates the second largest chain of company-owned and operated retail gasoline and convenience stores in the United States, with approximately 2,740 convenience stores in 21 states throughout the Midwest, East Coast and

Southeast regions of the United States. In addition, our highly successful Speedy Rewards® customer loyalty program, which averaged approximately 6 million active members in 2017, provides us with a unique competitive advantage and opportunity to increase our customer base at existing and new Speedway locations."

See, Plaintiff's Ex. #3, p. 7.

20. **Marathon 2017 10-K Report,** certified by Gary R. Heminger, Chairman of the Board and Chief Executive Officer of Marathon, pursuant to 18 U.S.C. §1350 reads:

"We consider assured sales as those sales we make to Marathon brand customers, our Speedway operations and to our wholesale customers with whom we have required minimum volume sales contracts. Our assured sales currently account for approximately 70% of our gasoline production. We believe having assured sales brings ratability to our distribution systems, provides a solid base to enhance our overall supply reliability and allows us to efficiently and effectively optimize our operations across our refineries and our transportation and distribution system."

See, Plaintiff's Ex. #3, p. 7.

21. **Marathon 2017 10-K Report,** certified by Gary R. Heminger, Chairman of the Board and Chief Executive Officer of Marathon, pursuant to 18 U.S.C. §1350 reads:

"Our January 3, 2017 announcement included conducting a full and thorough review of Speedway to ensure optimum value is being delivered to shareholders over the long term. On September 5, 2017, we announced that our board of directors, based on a recommendation from its independent special committee, determined that maintaining Speedway as a fully integrated business with MPC provides the best opportunity for enhancing long-term shareholder value. Key factors in the board of directors' decision to maintain Speedway as an integrated business within MPC included substantial integration synergies, support of MPC's investment-grade credit profile and ability to return capital to shareholders and the strong value of cash flow diversification.

See, Plaintiff's Ex. #3, p. 10.

22. **Marathon 2017 10-K Report,** certified by Gary R. Heminger, Chairman of the Board and Chief Executive Officer of Marathon, pursuant to 18 U.S.C. §1350 reads:

"Capital expenditures and investments for each of the last three years are

summarized by segment below.

Capital Spending

MPC's capital investment plan, excluding MPLX, totals approximately $1.6 billion in 2018 for capital projects and investments, excluding capitalized interest and acquisitions. We continuously evaluate our capital plan and make changes as conditions warrant. Capital expenditures and investments for each of the last three years are summarized by segment below.

(In millions)	2018 Plan	2017	2016	2015
Capital expenditures and investments[a]				
Refining & Marketing	$ 950	$ 832	$ 1,054	$ 1,045
Speedway	530	381	303	301
Midstream[b]	2,405	2,505	1,568	14,545
Corporate and Other[c]	85	138	144	192
Total	$ 3,970	$ 3,856	$ 3,069	$ 16,283

[a] Capital expenditures include changes in capital accruals.
[b] Includes $220 million for the acquisition of the Ozark pipeline and an investment of $500 million in Muskie Bakken related to the Bakken Pipeline in 2017, $10 million in 2016 for purchase price adjustments related to the MarkWest Merger and $13.85 billion in 2015 for the MarkWest Merger. See Item 8, Financial Statements and Supplementary Data – Note 5.
[c] Includes capitalized interest of $55 million, $63 million and $37 million for 2017, 2016 and 2015, respectively.

See, Plaintiff's Ex. #3 (Marathon 2017 10-K, p. 10.)

23. **Marathon 2017 10-K Report,** certified by Gary R. Heminger, Chairman of the Board and Chief Executive Officer of Marathon, pursuant to 18 U.S.C. §1350 reads:

> "The Speedway segment's 2018 capital forecast of approximately $530 million is focused on the construction of new store locations as well as remodeling and rebuilding existing locations, consistent with our commitment to aggressively grow the business and build upon its industry-leading position.
> Major projects over last three years included building new store locations, remodeling and rebuilding existing locations in core markets and building out our network of commercial fueling lane locations to capitalize on diesel demand growth. We also invested in the conversion, remodel and maintenance of stores acquired in 2014."

See, Plaintiff's Ex. #3 (Marathon 2017 10-K, p. 14.)

24. On September 5, 2017, MPC stated that maintaining Speedway as a fully integrated business with MPC provides the best opportunity for enhancing long-term shareholder value. Key factors in the board of directors' decision to maintain Speedway as an integrated business within MPC included substantial integration synergies, support of MPC's investment-grade credit profile and ability to return capital to shareholders and the strong value of cash flow diversification.

25. According to Schedule 13D filings with the United States Securities and

Exchange Commission, certified by both MPC's Vice President and MPC INVESTMENT LLC's Vice President, "MARATHON PETROLEUM CORPORATION controls MPC INVESTMENT LLC because MPC INVESTMENT LLC is a wholly owned subsidiary of MARATHON PETROLEUM CORPORATION."

26. MPC's Amended and Restated Bylaws provides that "A person serving in a Corporate Capacity with a direct or indirect subsidiary of the Corporation or another entity in the course of carrying out his or her duties to the Corporation or any direct or indirect subsidiary of the Corporation will, absent evidence to the contrary, be deemed to be serving in such Corporate Capacity at the request of the Corporation regardless of whether or not such request was made in writing." **See, Plaintiff's Ex. #4, 37 pages (Marathon Petroleum Corporation Amended and Restated By-Laws.)**

27. At all relevant times, MPC INVESTMENT LLC is a Beneficial Owner of the Robinson Illinois Refinery in Robinson, Illinois.

28. At all times relevant the Robinson Illinois Refinery produced gasoline, distillates, anode-grade coke, propane, aromatics, slurry and refinery-grade propylene.

29. At all times relevant, the Robinson Illinois Refinery distributed gasoline, distillates, anode-grade coke, propane, aromatics, slurry and refinery-grade propylene by pipeline, transport truck and rail to Marathon and Speedway branded Gas Stations.

30. On April 30, 2018, MPC submitted to the United States Securities Exchange Commission its Rule 425 Prospectuses and Communications, Business Combinations transcript, accession number 0001510295-18-000066. **See, Plaintiff's Ex. #5, 24 pages (Marathon SEC 425 conference transcript, p. 9.)**

31. On April 20, 2018, MPC's Chief Executive Officer, Gary R. Heminger, in a

recorded webcast and conference call memorialized and filed with United States Securities Exchange Commission under accession number 0001510295-18-000066, stated: "For company owned stores, we plan to leverage Speedway's fully integrated home office, back office, and point of sale platforms to drive earnings growth". **See, Plaintiff's Ex. #5.**

32. On April 20, 2018, MPC's Chief Executive Officer, Gary R. Heminger, in a recorded webcast and conference call memorialized and filed with United States Securities Exchange Commission under accession number 0001510295-18-000066, stated: "what we do best is that we touch the molecule every step of the way on the supply chain". **See, Plaintiff's Ex. #5.**

33. On April 20, 2018, MPC's Chief Executive Officer, Gary R. Heminger, in a recorded webcast and conference call memorialized and filed with United States Securities Exchange Commission under accession number 0001510295-18-000066, stated: "The key to – and we think, very rapid deployment of synergies on retail, are around Speedway's back office. We have one integrated system, one platform that manages the entire store from all the inventory ordering, to all labor control, to all payroll, and to all cash controls. It's all managed through one system". **See, Plaintiff's Ex. #5.**

34. On August 2, 2020, MPC announced its sale of SPEEDWAY, LLC. to 7-Eleven, Inc. **See, Plaintiff's Ex. #6, 4 pages (August 2, 2020 MPC News Release.)**

35. SPEEDWAY LLC owns, operates, manages, and/or controls the websites www.speedway.com and www.speedway.com/About/FuelSafety.com **See, Plaintiff's Ex. #7, 5 pages, p. 1 (Speedway Fuel Safety Publication.)**

36. www.speedway.com/About/FuelSafety reads, in part:

"Product Safety

Speedway is committed to providing a safe and healthy environment at every one of our convenience stores. Speedway as a company is responsible for taking precautions to protect our customers and employees from accident, injury or any unsafe condition. Below are just a few of the many safety measures taken:

- A proactive process focusing on increased safety awareness has been put in place to help prevent accidents and injuries at our convenience stores
- Our employees are responsible for observing all of the safety and health rules that apply to their jobs
- Each of us must promptly report unsafe or unhealthy conditions and immediately take steps to correct those conditions. We invite you to visit the links below to find out more about product safety at Speedway."

See, Plaintiff's Ex. #7, p. 1.

37. At all times relevant, accessible on www.speedway.com/About/FuelSaftey are Safety Data Sheets, including Safety Data Sheet 0104SPE012 http://content.speedway.com/MSDSlist/0104SPE012.pdf. **See, Plaintiff's Ex. #7, p. 1.**

38. Speedway Gasoline Safety Data Sheet reads, in part:

"Product Name:	Speedway Regular Unleaded Gasoline
Synonym:	Conventional Regular Unleaded Gasoline"

See, Plaintiff's Ex. #8, (Speedway Safety Data Sheet, p. 1.)

39. Speedway Gasoline Safety Data Sheet disclaimer reads:

"The information provide in this Safety Data Sheet is correct to the best of our knowledge, information and belief at the date of its publication. The information is intended as guidance for safe handling, use, processing, storage, transportation, accidental release, clean-up and disposal and is not considered a warranty or quality specification. The information relates only to the specific material designated and may not be valid for such material used in combination with any other materials or in any process, unless specified in the text"

See, Plaintiff's Ex. #8, p. 17.

40. Gasoline is a complex combination of hydrocarbons consisting of paraffins, cycloparaffins, aromatic and olefinic hydrocarbons having molecular chains

ranging in length from four to ten carbons.

41. Gasoline is an extremely flammable liquid and vapor.

42. Gasoline may be fatal if swallowed and enters airways.

43. Gasoline causes skin irritation.

44. Gasoline may cause genetic defects.

45. Gasoline is suspected of damaging fertility or the unborn child.

46. Gasoline may cause respiratory irritation.

47. Gasoline may cause drowsiness or dizziness.

48. Gasoline has the potential to bioaccumulate.

49. Gasoline may contain ethanol.

50. Ethanol in gasoline phase separates in contact with water.

51. Ethanol is highly soluble in water.

52. Speedway Regular Unleaded Gasoline is toxic to aquatic life with long lasting effects.

53. Gasoline may contain benzene, a known human carcinogen.

54. Gasoline is a blend of straight chain and aromatic hydrocarbons.

55. Gasoline is harmful to humans if ingested or absorbed through the skin. Inhalation of gasoline vapors may cause damage to lungs.

56. Gasoline is toxic to aquatic organisms if dumped or spilled into waters, and may cause long term adverse effects to aquatic environments.

57. Gasoline is highly flammable in liquid form, and gasoline vapors can ignite and cause flash fires or explosions.

58. Gasoline and gasoline vapors from spills can migrate through soil and

sewer systems into basements or crawl space cracks, utility and pipe entrance points, and other subsurface openings in residences and businesses.

59. Once inside buildings, gasoline vapors can create inhalation and explosion hazards for those living in the buildings.

60. Gasoline vapors may travel along the ground or be moved by ventilation and ignited by many sources such as pilot lights, sparks, electric motors, static discharge, or other ignition sources at locations distant from material handling.

GAS STATION #7445

61. Speedway is the owner of Speedway Gas Station #7445, located at 6241 S. Cass Avenue, Westmont, Illinois (hereafter "Gas Station #7445").

62. At all relevant times MPC owned the underground storage tanks at Gas Station #7445. **See, Plaintiff's Ex. #9 (March 15, 1989, Application for Permit of Underground Storage Tanks, 5 pages;) Plaintiff's Ex. #10 (December 4, 2015, Travelers Insurance Surety Bond with list of Illinois UST's owned by MPC/Speedway, 20 pages, p. 14;) Plaintiff's Ex. #1 (Illinois Secretary of State documents, 31 pages, December 1, 1989;) Plaintiff's Ex. #11 (Hinsdale Sanitary District Permit, dated December 1, 1989.)**

63. At all times relevant, Speedway was the owner and/or operator of the underground storage tank system located at site #7445 that dispensed gasoline to members of the general public.

64. At all times relevant, MANOJ VALIATHARA, was an Illinois resident employed by SPEEDWAY LLC, and operated, managed, supervised, and/or controlled Gas Station #7445.

65. Speedway gas station #7445 sells, dispenses, and markets petroleum products produced, manufactured, and/or supplied by MPC.

66. Gas station #7445 is approximately 1.4 miles west of a two-story apartment/condominium complex known as the Knolls of Willowbrook, including the building located at 6167 Knollwood Road, Willowbrook, Illinois, where plaintiff decedent MARGARET L. RICE resided on October 20, 2017.

67. Gas station #7445 is connected to a common sanitary sewer system via a sanitary sewer line that comes out of the north end of the premises. From there, the sanitary sewer line travels underground and turns right and continues east past a retention pond on the premises, at which point it turns right again and heads south past Beninford Lane to east 63rd Street, from where it turns east and continues in the direction of the 6167 Knollwood Road apartment building and the Flagg Creek Wastewater Treatment Plant. A storm sewer system managed by DuPage County (hereafter "Storm Sewer System") lies underneath the western portion of the premises and underneath and along Cass Avenue.

68. At all times relevant, located at GAS STATION #7445 for purposes of storing and dispensing gasoline, kerosene and diesel were six single-walled fiberglass Underground Storage Tanks and associated ancillary equipment (hereafter "UST system").

69. At all times relevant, the UST System at GAS STATION #7445 included four (4) 10,000-gallon underground storage tanks (hereafter "UST") for gasoline storage and dispensing, one 4,000-gallon UST for diesel storage and dispensing, and one 4,000-gallon UST for kerosene storage and dispensing.

70. At all times relevant, Regular Unleaded Gasoline Underground Storage Tank RUL A NORTH, a/k/a "OSFM Tank #1"; "T3: 113 RUL A NORTH"; and "Tank 3," (hereafter referred to as "113 RUL A NORTH", or "OSFM #1") was one of the four 10,000-gallon USTs used for gasoline storage and dispensing at GAS STATION #7445, with a maximum capacity of 9816 gallons.

71. The four 10,000 gallon UST's were installed, and became operational at Gas Station #7445, In 1989.

72. At all times relevant, MPC and SPEEDWAY LLC did business throughout the state of Illinois, including Cook County, dispensing gasoline and other petroleum products as well as selling other consumer goods at various Marathon and Speedway facilities, including Gas Station #7445.

73. GAS STATION #7445 sold fuel that was manufactured, transported, and supplied by MPC.

74. At all times relevant prior to October 20, 2017, petroleum products, including fuel grade gasoline, manufactured and supplied by MPC, were sold at GAS STATION #7445.

75. At all times relevant prior to October 20, 2017, products, including gasoline, marketed, sold, and/or dispensed at GAS STATION #7445 were sold under the SPEEDWAY logo.

76. On February 17, 2017, SPEEDWAY LLC had possession and control of the "Site Investigation Completion Report" compiled in response to a gasoline release out of Gas Station #7445's underground storage tanks. **See, Plaintiff's Ex. #12 (Site Investigation Completion Report (SICR), dated February 17, 2017, 32 pages, p. 1.)**

77. Gas Station #7445 UST Site Investigation Completion Report identifies the area surrounding Gas Station #7445 as having a population of 24,685 persons with residential properties located to the east of Gas Station #7445. **See, Plaintiff's Ex. #12, p. 14.**

78. Gas Station #7445 Site Investigation Completion Report (hereafter SICR) identifies Flagg Creek Water Reclamation District sanitary sewer and the DuPage County Highway Department storm sewer as existing and potential migration pathways and exposure routes that may be adversely affected by a gasoline release from Gas Station's #7445 UST's. **See, Plaintiff's Ex. #12, p. 15.**

79. At all times relevant prior to October 20, 2017, defendant's and others working in their employ, assumed duties with respect to the USTs, including 113 RUL A NORTH, and the UST System, including but not limited to, monitoring, refueling, servicing and otherwise maintaining the UST's and UST System at Gas Station #7445.

80. At all times relevant prior to October 20, 2017, SPEEDWAY, owns, operates, manages, and/or has access to information maintained and/or recorded on the url: www.speedway-ids.com.

81. At all times relevant prior to October 20, 2017, defendants had access to information maintained and recorded on the web based Inform.Net, Remote Fuel Management Software, which communicated the real time contents of the UST's at Gas Station #7445 to MPC and SPEEDWAY.

82. On October 5, 2017, SPEEDWAY and others working in its employ, monitored, serviced and/or maintained the UST's at GAS STATION #7445 on October 5, 2017. **See, Plaintiff's Ex. #13 (October 5, 2017, Work Order 001102293094.)**

83. On October 5, 2017, a tank high water warning resulted in a "critical" work order to investigate the water condition of the UST's at GAS STATATION #7445. **See, Plaintiff's Ex. #14, 2 pages (October 5, 2017, Work Order 001102293316.)**

84. On October 9, 2017, SPEEDWAY, and those working in its employ, monitored, serviced and/or maintained UST 113 RUL A NORTH/OSFM1, and the other UST's at GAS STATION #7445. **See, Plaintiff's Ex. #14, p. 2.**

85. On October 9, 2017, a SPEEDWAY Maintenance Technician arrived at GAS STATION #7445 to investigate the water condition in the USTs, including 113 RUL A NORTH. **See, Plaintiff's Ex. #15, 2 pages (October 9, 2017, Work Order #001102299857.)**

86. On October 9, 2017, a SPEEDWAY Maintenance Technician reported water was present in 113 RUL A NORTH and/or the UST System at GAS STATION #7445. **See, Plaintiff's Ex. #15, p. 1.**

87. On October 9, 2017, approximately 1,000 gallons of a water/fuel liquid solution, which was between 95 to 99% water, was vacuumed/pumped out of 113 RUL A NORTH at GAS STATION #7445. **See, Plaintiff's Ex. #15 – page 1.**

88. On October 9, 2017, a SPEEDWAY Maintenance Technician shut off the breaker to the Submersible Turbine Pump Motor in 113 RUL A NORTH at GAS STATION #7445 and verified 10.72 inches of water in 113 RUL A NORTH. **See, Plaintiff's Ex. #15.**

89. On October 10, 2017, SPEEDWAY and others working in its employ, monitored, serviced and/or maintained the 113 RUL A NORTH, the other USTs and the UST System at GAS STATION #7445. **See, Plaintiff's Ex. #15, p. 1.**

90. SPEEDWAY LLC Work Order# 001102299857 dated October 10, 2017,

states, in part:

> "Status: Open Resolution: Worked with Fanol and discovered that the tank is taking on water. Tank is full now. Called Ziron and discovered that they had been out on 10/9/17 per request by Mike Comella. Spoke with Bob with Zlron and was informed that approximately one thousand gallons was removed. The water was filling as it was being removed. Contacted DRW to diagnose where the water is coming from. they will be onsite along with Ziron this morning to pump out water and diagnose the cause."

See, Plaintiff's Ex. #15, p. 1.

91. On October 10, 2017, approximately 1,145 gallons of a water-fuel mixture, which was between 95 to 99% water, was vacuumed/pumped out of 113 RUL A NORTH at GAS STATION #7445. **See, Plaintiff's Ex. #14, p. 2; Plaintiff's Ex. #16, 2 pages (October 10, 2017, Ziron Environmental Work Order #77797901.)**

92. On October 11, 2017, MPC and/or SPEEDWAY, and others working in their employ, monitored, serviced and/or maintained the USTs, including 113 RUL A NORTH, at GAS STATION #7445. **See, Plaintiff's Ex. #15, p. 2.**

93. The contents of the underground storage tanks in the UST System at Gas Station #7445, including 113 RUL A NORTH, were electronically monitored by a Veeder-Root TLS-350, Automatic Tank Gauge System.

94. The Veeder-Toot TLS-350 Automatic Tank Gauge System consists of automatic tank gauge probes located inside each UST which transmit data in real time to a control console (Veeder Root Control Console) located in Gas Station #7445 and to MPC and SPEEDWAY through the web-based Inform.Net Remote Fuel Management Software. **See, Plaintiff's Ex. #17, (Nine Photographs of a Veeder Root TLS-350; 9 pages;) Plaintiff's Ex. #18 (Veeder Root Inform.Net 4.0 Software Information, 2 pages.)**

95. The Veeder-Root TLS-350 Automatic Tank Gauge System function both as inventory-tracking for sales and as a required safety component per Illinois regulations.

96. At all times relevant, the automatic tank gauges continuously measured the volume of gasoline, and, if present, the volume of water in the UST's at Gas Station #7445 and transmitted those measurements in real time to the Veeder Root data concerning the status and contents of the UST's at any given time. **See, Plaintiff's Ex. #17; Plaintiff's Ex. #19, 4 pages (ATG Tank Status Reports.)**

97. At all times relevant, located at Gas Station #7445, the automatic tank gauges which electronically monitored the volume of product, and water level in the USTs at GAS STATION #7445 produced tank status reports in real time with data concerning the UST's at any given time. **See, Plaintiff's Ex. #17 (Photographs of Veeder Root TLS-350) and Plaintiff's Ex. #19, 4 pages (ATG Tank Status Reports for Gas Station #7445, various dates in October, 2017.)**

98. The ATGs measured the height and volume of gasoline in the 113 RUL A NORTH and, if present, the height and volume of water in the UST. The Veeder-Root analyzed the data collected and simultaneously communicated it to a console in Gas Station #7445 and directly to Speedway corporate headquarters and to MPC personnel.

99. The Veeder-Root Control Console at Gas Station #7445, also activates visual and audible warnings and/or alarms, reported on the Tank Status Reports and communicated in real time directly to MPC and SPEEDWAY when the ATG probes measure unusual activity, or potentially hazardous conditions existing within the UST System, including unsafe levels of gasoline within a UST and the presence of water in a UST. **See, Plaintiff's Ex. #20 ("Alarm History Report" 9 pages, Note well; 113 RUL**

A NORTH is identified on Plaintiff's Ex. #20 Alarm History Report, as "Tank 3".)

100. The Veeder-Root Control Console warning alarms are very loud, audible alarms warning Gas Station #7445 employees inside Gas Station #7445, as well as communicated directly to Speedway Corporate headquarters.

101. At all times relevant, electronic alerts, warnings, alarms, electronic monitoring data and/or product inventory reports recording the contents of the USTs, including 113 RUL A NORTH, and the UST System at Gas Station #7445 were transmitted directly to a MPC refinery and/or personnel.

102. At all times relevant, electronic alerts, warnings, alarms, electronic monitoring data and/or product inventory reports recording the contents of the USTs, including 113 RUL A NORTH, and the UST System at Gas Station #7445 were transmitted directly to SPEEDWAY corporate headquarters.

103. At all relevant times, MPC and SPEEDWAY had access to, and monitored, ATG data from Gas Station #7445 and would respond with fuel deliveries based on the Veeder Root ATG data.

104. That at all relevant times the Veeder-Root/Automatic Tank Gauge System at Gas Station #7445 was accurately measuring and communicating the contents in, and status of, the UST's, and UST system, to MPC and SPEEDWAY personnel.

105. On November 14, 2016, at 12:43 PM, GAS STATION #7445's ATG recorded, in part:

Site: 7445
Product Type: 113 RUL A NORTH
Volume: 475
TC Volume: 473
Max Capacity: 9816
Percentage Volume: 5

Water Level: 0
Safe Ullage: 9341
Inventory Date: 11/14/2016 12:43 PM

See, Plaintiff's Ex. #21 – Veeder Root Automatic Tank Gauge Monitoring/Inventory Report, p. 3.

106. On November 14, 2016, at 2:45:15 PM, GAS STATION #7445's ATG recorded, in part:

Site: 7445
Product Type: 113 RUL A NORTH
Volume: 8785
TC Volume: 8818
Max Capacity: 9816
Percentage Volume: 89
Water Level: 0
Safe Ullage: 1031
Inventory Date: 11/14/2016 2:43 PM

See, Plaintiff's Ex. #21, p. 3.

107. On January 9, 2017, at 12:45:15 AM, GAS STATION #7445's ATG recorded, in part:

Site: 7445
Product Type: 113 RUL A NORTH
Volume: 8755
TC Volume: 8818
Max Capacity: 9816
Percentage Volume: 89.19
Level: 75.3927
Water Level: 0
Safe Ullage: 79
Safe Ullage Percentage: 0.79
Last Updated Date Time: 01/09/2017 12:45:15 AM

See, Plaintiff's Ex. #21, p. 4.

108. On January 9, 2017, at 6:45:15 AM, GAS STATION #7445's ATG recorded, in part:

Site: 7445
Product Type: 113 RUL A NORTH
Volume: 9816
TC Volume: 9905
Max Capacity: 9816
Percentage Volume: 100
Level: 92.3428
Water Level: 0
Safe Ullage: -982
Safe Ullage Percentage: -9.82
Last Updated Date Time: 01/09/2017 6:45:15 AM

See, Plaintiff's Ex. #21, p. 5.

109. On September 27, 2017 at 3:45:11 AM, GAS STATION #7445's ATG recorded, in part:

Site: 7445
Product Type: 113 RUL A NORTH (a/k/a OSFM #1)
Volume: 9816
TC Volume: 9736
Max Capacity: 9816
Percentage Volume: 100
Level: 92.5454
Water Level: 0
Safe Ullage: -982
Safe Ullage Percentage: -9.82
Last Updated Date Time: 09/27/2017 3:45:11 AM

See, Plaintiff's Ex. #21, p. 6.

110. On October 1, 2017 at 7:45:14 PM GAS STATION #7445's ATG recorded, in part:

Site: 7445
Product Type: 113 RUL A NORTH
Volume: 9816
TC Volume: 9732
Max Capacity: 9816
Percentage Volume: 100
Level: 92.5462
Water Level: 0.8113
Safe Ullage: -982

Safe Ullage Percentage: -9.82
Last Updated Date Time: 10/1/2017 7:45:14 PM

See, Plaintiff's Ex. #21, p. 7

111. On October 4, 2017 at 5:45:20 PM GAS STATION #7445's ATG recorded, in part:

Site: 7445
Product Type: 113 RUL A NORTH
Volume: 9816
TC Volume: 9732
Max Capacity: 9816
Percentage Volume: 100
Level: 92.5446
Water Level: 0.8448
Safe Ullage: -982
Safe Ullage Percentage: -9.82
Last Updated Date Time: 10/04/2017 5:45:20 PM

See, Plaintiff's Ex. #21, p. 8.

112. On October 5, 2017 at 7:45:15 PM GAS STATION #7445's ATG recorded, in part:

Site: 7445
Product Type: 113 RUL A NORTH
Volume: 9816
TC Volume: 9732
Max Capacity: 9816
Percentage Volume: 100
Level: 95.6507
Water Level: 1.4551
Safe Ullage: -982
Safe Ullage Percentage: -9.82
Last Updated Date Time: 10/5/2017 7:45:15 PM

See, Plaintiff's Ex. #21, p. 8.

113. On October 9, 2017 at 7:45:15 PM, GAS STATION #7445's ATG recorded, in part:

Site: 7445
Product Type: 113 RUL A NORTH
Volume: 9816
TC Volume: 9706
Max Capacity: 9816
Percentage Volume: 100
Level: 90.8841
Water Level: 10.7233
Safe Ullage: -982
Safe Ullage Percentage: -9.82
Last Updated Date Time: 10/9/2017 7:45:15 PM

See, Plaintiff's Ex. #21, p. 10.

114. On October 10, 2017 at 7:45:21 PM GAS STATION #7445's ATG recorded, in part:

Site: 7445
Product Type: 113 RUL A NORTH
Volume: 9815
TC Volume: 9711
Max Capacity: 9816
Percentage Volume: 99.99
Level: 90.7993
Water Level: 13.2338
Safe Ullage: -981
Safe Ullage Percentage: -9.81
Last Updated Date Time: 10/10/2017 7:45:21 PM

See, Plaintiff's Ex. #21, p. 10.

115. On October 11, 2017 at 7:45:11 PM, GAS STATION #7445's ATG recorded, In part:

Site: 7445
Product Type: 113 RUL A NORTH
Volume: 9816
TC Volume: 9702
Max Capacity: 9816
Percentage Volume: 100
Level: 91.1522
Water Level: 28.4316

Safe Ullage: -982
Safe Ullage Percentage: -9.82
Last Updated Date Time: 10/11/2017 7:45:11 PM

See, Plaintiff's Ex. #21, p. 11.

116. On October 12, 2017 at 7:45:11 PM, GAS STATION #7445's ATG recorded, in part:

Site: 7445
Product Type: 113 RUL A NORTH
Volume: 9816
TC Volume: 9710
Max Capacity: 9816
Percentage Volume: 100
Level: 91.1575
Water Level: 28.5139
Safe Ullage: -982
Safe Ullage Percentage: -9.82
Last Updated Date Time: 10/12/2017 7:45:11 PM

See, Plaintiff's Ex. #21, p. 11.

117. On October 13, 2017 at 7:45:19 PM GAS STATION #7445's ATG recorded, in part:

Site: 7445
Product Type: 113 RUL A NORTH
Volume: 9816
TC Volume: 9715
Max Capacity: 9816
Percentage Volume: 100
Level: 91.1651
Water Level: 28.5747
Safe Ullage: -982
Safe Ullage Percentage: -9.82
Last Updated Date Time: 10/13/2017 7:45:19 PM

See, Plaintiff's Ex. #21, p. 11.

118. On October 14, 2017 at 7:45:21 PM, GAS STATION #7445's ATG recorded,

in part:

Site: 7445
Product Type: 113 RUL A NORTH
Volume: 9816
TC Volume: 9725
Max Capacity: 9816
Percentage Volume: 100
Level: 97.3053
Water Level: 48.5978
Safe Ullage: -982
Safe Ullage Percentage: -9.82
Last Updated Date Time: 10/14/2017 7:45:21 PM

See, Plaintiff's Ex. #21, p. 12.

119. On October 15, 2017 at 7:45:12 PM, GAS STATION #7445's ATG recorded, in part:

Site: 7445
Product Type: 113 RUL A NORTH
Volume: 9816
TC Volume: 9735
Max Capacity: 9816
Percentage Volume: 100
Level: 97.2966
Water Level: 93.3059
Safe Ullage: -982
Safe Ullage Percentage: -9.82
Last Updated Date Time: 10/15/2017 7:45:12 PM

See, Plaintiff's Ex. #21, p. 12.

120. On October 16, 2017 at 7:45:13 PM, GAS STATION #7445's ATG recorded, in part:

Product Type: 113 RUL A NORTH
Volume: 9816
TC Volume: 9737
Max Capacity: 9816
Percentage Volume: 100
Level: 97.2964

Water Level: 93.3081
Safe Ullage: -982
Safe Ullage Percentage: -9.82
Last Updated Date Time: 10/16/2017 7:45:13 PM

See, Plaintiff's Ex. #21, p. 13.

121. On October 17, 2017 at 7:45:18 PM, GAS STATION #7445's ATG recorded, in part:

Site: 7445
Product Type: 113 RUL A NORTH
Volume: 9816
TC Volume: 9739
Max Capacity: 9816
Percentage Volume: 100
Level: 97.2964
Water Level: 93.3061
Safe Ullage: -982
Safe Ullage Percentage: -9.82
Last Updated Date Time: 10/17/2017 7:45:18 PM

See, Plaintiff's Ex. #21, p. 13.

122. On October 18, 2017 at 7:45:16 PM, GAS STATION #7445's ATG recorded, in part:

Site: 7445
Product Type: 113 RUL A NORTH
Volume: 9816
TC Volume: 9740
Max Capacity: 9816
Percentage Volume: 100
Level: 97.2963
Water Level: 93.307
Safe Ullage: -982
Safe Ullage Percentage: -9.82
Last Updated Date Time: 10/18/2017 7:45:16 PM

See, Plaintiff's Ex. #21, p. 14.

123. On October 19, 2017 at 7:45:13 PM, GAS STATION #7445's ATG recorded,

in part:

Site: 7445
Product Type: 113 RUL A NORTH
Volume: 9816
TC Volume: 9742
Max Capacity: 9816
Percentage Volume: 100
Level: 97.2963
Water Level: 93.3069
Safe Ullage: -982
Safe Ullage Percentage: -9.82
Last Updated Date Time: 10/19/2017 7:45:13 PM

See, Plaintiff's Ex. #21, p. 14.

124. On October 20, 2017 at 11:45:12 AM, GAS STATION #7445's ATG recorded, in part:

Site: 7445
Product Type: 113 RUL A NORTH
Volume: 9816
TC Volume: 9742
Max Capacity: 9816
Percentage Volume: 100
Level: 97.2961
Water Level: 93.3065
Safe Ullage: -982
Safe Ullage Percentage: -9.82
Last Updated Date Time: 10/20/2017 11:45:12 AM

See, Plaintiff's Ex. #21, p. 14.

125. Beginning on January 9, 2017, 113 RUL A NORTH contained 9816 gallons of gasoline.

126. 113 RUL A NORTH was in active Critical Tank Maximum Product alarm status every day from January 9, 2017, through October 20, 2017. **See, Plaintiff's Ex. #20 (Alarm History Report.)**

127. At no point after January 9, 2017, was gasoline dispensed out of 113 RUL

A NORTH. **See, Plaintiff's Ex. #22, 2 pages,(Apparent Causal Events); Plaintiff's Ex. #23, 2 pages (Speedway Store #7445 Chronology: 10/01/17 – 110/20/17.)**

128. That 113 RUL A North's Water Level increased from approximately 10.7233 inches on October 9, 2017 at 7:45:15 P.M. to approximately 93.3065 inches by October 15, 2017 at 7:45:12 P.M.

129. Based on the Veeder Root/ATG data, above, the 9,816 gallons of gasoline present in 113 RUL A NORTH/OSFM #1 on October 1, 2017, had been replaced entirely by water by October 15, 2017.

130. Prior to October 4, 2017, MPC knew the Flagg Creek Water Reclamation District sanitary sewer and the DuPage County Highway Department storm sewer as existing and potential migration pathways and exposure routes that may be adversely affected by a gasoline release from Gas Station's #7445 UST System. **See, Plaintiff's Ex. #12 (February 17, 2017, SICR, p. 15.)**

131. Prior to October 4, 2017, SPEEDWAY knew the Flagg Creek Water Reclamation District sanitary sewer and the DuPage County Highway Department storm sewer as existing and potential migration pathways and exposure routes that may be adversely affected by a gasoline release from Gas Station's #7445 UST System. **See, Plaintiff's Ex. #12 (p. 15.)**

132. Prior to October 4, 2017, MANOJ VALIATHARA knew the Flagg Creek Water Reclamation District sanitary sewer and the DuPage County Highway Department storm sewer as existing and potential migration pathways and exposure routes that may be adversely affected by a gasoline release from Gas Station's #7445 UST System. **See, Plaintiff's Ex. #12, p. 15.**

133. Prior to October 4, 2017 MPC, SPEEDWAY and MANOJ VALIATHARA knew that water entering a UST can displace gasoline out of the UST and cause the displaced gasoline to release into the environment surrounding the UST.

134. Beginning on or about October 5, 2017 the UST's at Gas Station # 7445 exhibited unusual operating conditions such as the erratic behavior of equipment and/or unexplained presence of water in the USTs. **See, Plaintiff's Ex. #13, Plaintiff's Ex. #14, p. 1.**

135. According to the Veeder Root 350 ATG System at Gas Station #7445, on or about October 9, 2017 and continuing to at least October 20, 2017, water entered 113 RUL A North, the USTs and/or the UST System at GAS STATION #7445 and released/displaced gasoline out of 113 RUL A North, the USTs and/or the UST System at GAS STATION #7445 into the surrounding area and environment. **See, Plaintiff's Ex. #14; Plaintiff's Ex. #15; Plaintiff's Ex. #24 (Defendant, Speedway Gasoline Release Investigation Report, 7 pages, dated December 13, 2017.)**

136. On or about October 9, 2017, and continuing to at least October 20, 2017, water had entered 113 RUL A North, the USTs and/or the UST System at GAS STATION #7445 and released/displaced gasoline out of 113 RUL A North, the USTs and/or the UST System at GAS STATION #7445 and into the surrounding area and environment. **See, Plaintiff's Ex. #14; Plaintiff's Ex. #15; Plaintiff's Ex. #24.**

137. On or about October 9, 2017, and continuing to at least October 20, 2017, MPC knew water had entered 113 RUL A North, the USTs and/or the UST System at GAS STATION #7445 and released/displaced gasoline out of 113 RUL A North, the USTs and/or the UST System at GAS STATION #7445 and into the surrounding area and

environment. **See, Plaintiff's Ex. #14; Plaintiff's Ex. #15; Plaintiff's Ex. #24.**

138. On or about October 9, 2017, and continuing to at least October 20, 2017, SPEEDWAY knew water had entered 113 RUL A North, the USTs and/or the UST System at GAS STATION #7445 and released/displaced gasoline out of 113 RUL A North, the USTs and/or the UST System at GAS STATION #7445 and into the surrounding area and environment. **See, Plaintiff's Ex. #14; Plaintiff's Ex. #15; Plaintiff's Ex. #21, Plaintiff's Ex. #24.**

139. On or about October 9, 2017, and continuing to at least October 20, 2017, MANOJ VALIATHARA knew water entered 113 RUL A North, the USTs and/or the UST System at GAS STATION #7445 and released/displaced gasoline out of 113 RUL A North, the USTs and/or the UST System at GAS STATION #7445 and into the surrounding area and environment. **See, Plaintiff's Ex. #14; Plaintiff's Ex. #15; Plaintiff's Ex. #21; Plaintiff's Ex. #24.**

140. Between October 5, 2017, and October 15, 2017, MPC did not pump out and/or remove all gasoline from 113 RUL A North, the USTs or the UST System at GAS STATION #7445.

141. Between October 5, 2017, and October 15, 2017, SPEEDWAY did not pump out and/or remove gasoline from 113 RUL A North, the USTs or the UST System at GAS STATION #7445.

142. Beginning in October, 2017, on a date best known to defendant's MPC, Speedway, and MANOJ VALIATHARA, and continuing to at least October 20, 2017, gasoline was released/displaced out of US 113 RUL A NORTH and migrated through soil towards a portion of the sanitary sewer system lying underneath the premises, at which

point the gasoline entered the sanitary sewer system through one or more of four entry points underneath the premises where the sanitary sewer line had been cracked and/or compromised. One of the aforementioned entry points lies underneath the northern portion of the premises, and the other three lie along the eastern boundary of the premises. Upon entering the sanitary sewer system, the gasoline and associated vapors were transported in the direction of the Knollwood Road apartment building located at 6167 Knollwood Road, Willowbrook, Illinois, through the sewer line. Subsequently, on October 20, 2017, and such other days prior thereto best known to MPC, SPEEDWAY, and MANOJ VALIATHARA, gasoline from the affected UST, 113 RUL A NORTH/OSFM #1 also migrated through soil into the storm sewer system. **See, Plaintiff's Ex. #22 (Apparent Causal Events, 3 pages); and Plaintiff's Ex. # 23 (Speedway Store #7445 Chronology: 10/01/17 – 10/20/17, 2 pages); and Plaintiff's Ex. #24 (December 13, 2017, Speedway Gasoline Release Investigation Report, 7 pages.)**

143. MPC, SPEEDWAY, and/or MANOJ VALIATHARA became aware – at some point between October 5, 2017, and October 19, 2017, that 113 RUL A NORTH was itself compromised and was being infiltrated by water at the top of the tank that was then displacing stored gasoline, creating a substantial threat of a release from the tank.

144. The underground tank warnings and alarms monitoring the UST's had been activated in warning defendants, MPC, SPEEDWAY, and/or MANOJ VALIATHARA of a substantial threat of a potential release for at least 9 days prior to the explosion as hereinafter alleged that occurred on October 20, 2017. **See, Plaintiff's Ex. #20, p. 4, 5, 6.**

145. Instead of properly responding to the warnings, and then alarms, from the

underground storage tank Veeder Root System/ATG monitoring the UST's at Gas Station #7445, defendants, MPC, SPEEDWAY, and/or MANOJ VALIATHARA ignored the warnings, and then the alarms, from the Veeder Root System/ATG.

146. At approximately 5:00 p.m. on October 19, 2017, Richard Littig, the battalion Chief of the Tri-State Fire Department, contacted the Illinois Emergency Management Agency ("IEMA") to report an odor resembling that of nail polish remover in addition to a high Lower Explosive Limit ("LEL") of unknown origin in basement-level apartment units located at 6106 Knoll Valley Drive, Willowbrook, Illinois ("Knoll Valley Drive Apartment Building"), approximately 1.5 miles east of Gas Station #7445.

EVENTS OF OCTOBER 20, 2017

147. In the early morning hours of October 20, 2017, Chief Littig contacted the Illinois EPA and reported that the odor in the sanitary sewer system extended more than half a mile from the Knoll Valley Apartment Building.

148. On October 20, 2017, between 9:00 A.M. - 9:30 AM, an explosion occurred at plaintiff's condominium complex/residence, 6167 Knollwood Road, Unit 106, Willowbrook, Illinois. **See, Plaintiff's Ex. #25, 10 pages (Village of Westmont Fire Department Incident Report #17-0003256, prepared by Deputy Chief James Connolly.)**

149. On October 20, 2017, between 9:00 A.M. - 9:30 a.m., plaintiff was doing her weekly laundry in the buildings' residential laundry room. The laundry room is on the first floor of plaintiff's building, directly behind plaintiff's dining room.

150. Plaintiff removed her laundry from the washer and placed it in the dryer.

151. Plaintiff placed her quarters into the dryers' payment slot. She then activated the dryer.

152. The spark from the dryer being activated caused a large fiery explosion to occur.

153. The blast from the explosion blew plaintiff through the laundry room and into the hallway wall with extreme force.

154. The heat from the blast resulted in plaintiff sustaining second degree burns over at least 10% of her whole body surface as well as other injuries. **See, Plaintiff's Ex. #26 (November 7, 2017, Medical Report from Thomas Vizinas, D.O.); Plaintiff's Ex #27 (14 photographs of plaintiff taken on or about November 10, 2017; 1 photograph of plaintiff with twin sister Mildred Schroeder, taken in March, 2017, 80th birthday party.)**

155. The explosion also destroyed a large part of plaintiff's residence and her personal belongings, with plaintiff not being able to return to her home for over one (1) year, while it was being rebuilt/remediation.

156. By the time of the explosion in the laundry room of plaintiff's residence, the Village of Willowbrook Public Works Division had traced the source of the odors and vapors at plaintiff's residence to the gasoline release from Gas Station #7445.

157. The local sanitary district had also alerted the Tri-State Fire Department of the presence of vapors in the sanitary sewer system when plaintiff's residence exploded.

158. The explosion at plaintiff's residential laundry room at the Knolls of Willowbrook Condominium/Apartment Complex was caused by the migration of gasoline vapors associated with the release from Gas Station #7445 through the sanitary sewer

system to the Knolls of Willowbrook Apartment building where plaintiff resided, where they were ignited by plaintiff's operation of the laundry room dryer.

159. Due to other structural damage at the Knoll of Willowbrook Condo/Apartment complex, 150 units within the Knollwood Road Apartment complex were evacuated due to public safety concerns.

160. The gasoline release from Gas Station #7445 resulted in at least ten (10) additional explosions (at least three of which occurred in residential buildings), which occurred in the vicinity of the release and sanitary sewer system.

161. At least twelve (12) households were evacuated on a long term basis as a result of the permanent damage to their homes from the gasoline release from the UST's at Gas Station #7445.

162. The gasoline release also caused LEL levels in the sanitary sewer system to reach 100% and increased pressure in the sanitary sewer system to such a degree that fourteen (14) manhole covers were blown off in the surrounding area.

163. The petroleum release from 113 RUL A NORTH/OSFM #1, created contaminants, hazardous substances and/or waste once it entered the public sanitary sewer system.

164. On October 20, 2017, the release caused alarms to sound at the Flagg Creek Water Treatment facility, located five (5) miles from Gas Station #7445.

165. Massive amounts of emulsifier was consequently deployed in the sanitary sewer system in order to reduce vapors, as sanitary sewer caps were replaced with grates to eliminate vapor built up.

166. At approximately 10:32 a.m. on October 20, 2017, James Connolly, Deputy Chief of the Westmont Fire Department arrived at Gas Station #7445. **See, Plaintiff's Ex. #25, 10 pages, p. 2 (Westmont Fire Department Incident Report.)**

167. On October 20, 2017 at approximately 11:30 a.m. a SPEEDWAY maintenance technician arrived at GAS STATION #7445 to assist with environmental remediation. **See, Plaintiff's Ex. 28, 1 page (October 20, 2017, Work Order No. 001102320799.)**

168. On or about 4:00 p.m. on October 20, 2017, a representative from the Office of the Illinois State Fire Marshall ("OSFM") was at Gas Station #7445, in response to the gasoline release and ordered MPC and its agents SPEEDWAY to remove any remaining gasoline from 113 RUL A NORTH.

169. The OSFM representative also requested, on October 20, 2017, that any remaining gasoline be removed from the other UST's in the UST system in order to protect the public health and welfare. **See, Plaintiff's Ex. 29, 4 pages (October 20, 2017, OSFM Emergency Response Investigation Report Facility.)**

170. From at least October 11, 2017, and likely for some time prior to, and continuing through at least October 20, 2017, the uncontrolled release of gasoline from the UST's owned and operated by MPC, through SPEEDWAY, contaminated soil and the ground water at and adjacent to Gas Station #7445 and entered into the sanitary sewer system and the storm sewer system.

171. The release also emitted vapors that directly harmed the health and well being of the residents of the Knolls of Willowbrook Apartment/Condominium Complex, including plaintiff, and posed a potential inhalation hazard to all persons in the

surrounding vicinity of Gas Station #7445, including plaintiff, and those living at the Knolls of Willowbrook condominium complex, members of the general public and those that live along, upon, or near the sanitary sewer system line.

172. MPC, through SPEEDWAY, by having liquid gasoline released from 113 RUL A NORTH/OSFM #1 at Gas Station #7445, and to migrate offsite and into residential buildings, including the plaintiff's, created circumstances of substantial danger to the public's, including plaintiff's, health, environment and safety, prior to, at the time of, and subsequent to the explosions of October 20, 2017.

COUNT I
VIOLATION OF ILLINOIS ENVIRONMENTAL PROTECTION ACT;
BODILY INJURY RESULTING FROM RELEASE OF PETROLEUM FROM UNDERGROUND STORAGE TANK;
STRICT LIABILITY;
MARATHON PETROLEUM CORPORATION

NOW COMES Plaintiff, LAURA E. RICE, as Special Representative of the Estate of MARGARET L. RICE, deceased, ("plaintiff") by and through her attorneys, BUDIN LAW OFFICES, realleges and incorporates paragraphs 1 through 172 of Facts Common To All Counts, as though fully set forth herein as Paragraphs 1 – 172 of this Count I of plaintiff's Amended Complaint at Law, complaining of defendant MARATHON PETROLEUM CORPORATION (hereafter "MPC").

173. This Count is brought pursuant to the Illinois Environmental Protection Act, 415 ILCS 5/1 et seq., generally, and specifically Title XVI, Petroleum Underground Storage Tanks, 415 ILCS 5/57.1 – 19.

174. Damages are authorized pursuant to Title XII of the Act, **"Penalties"** 415 ILCS 5/42, et seq.

175. The Illinois Environmental Protection Act was borne as a result of Article XI of the Illinois Constitution, which states; Article XI, ENVIRONMENT:

> 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.
> (Source: Illinois Constitution.)
>
> 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.
> (Source: Illinois Constitution.)

176. Title I of the Environmental Protection Act, 415 ILCS 5/2(a) states in relevant part:

> "The General Assembly finds:
>
> "(i) That environmental damage seriously endangers the public health and welfare, as more specifically described in later sections of this Act:
>
> (ii) that because environmental damage does not respect political boundaries, it is necessary to establish a unified state-wide program for environmental protection and to cooperate fully with other States and with the United States in protecting the environment;
>
> (iii) that air, water, and other resource pollution, public water supply, solid waste disposal, noise, and other environmental problems are closely interrelated and must be dealt with as a unified whole in order to safeguard the environment;
>
> (v) that in order to alleviate the burden on enforcement agencies, to assure that all interests are given a full hearing, and to increase public participation of protecting the environment, private as well as governmental remedies must be provided;
>
> (vi) that despite the existing laws and regulations concerning environmental damage there exist continuing destruction and damage to the environment and harm to the public health, safety and welfare of the people of this State,

and that among the most significant sources of this destruction, damage, and harm are the improper and unsafe transportation, treatment, storage, disposal, and dumping of hazardous wastes;

(vii) that it is necessary to supplement and strengthen existing criminal sanctions regarding environmental damage, by enacting specific penalties for injury to public health and welfare in the environment.

(b) It is the purpose of this Act, as more specifically described in later sections, 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.

(c) The terms and provisions of this Act shall be liberally construed so as to effectuate the purposes of the Act as set forth in subsection (b) of this Section, but to the extent that this Act prescribes criminal penalties, it shall be construed in accordance with the Criminal Code of 2012."

177. The Illinois Environmental Protection Act (hereafter "the Act"), is implemented and administered through 35 Illinois Administrative Code.

178. The Act, enacted June 29, 1970, is patterned after, and largely mirrors, the Federal United States Environmental Protection Act.

179. That Illinois Environmental laws, statutes, regulations, and/or rules cannot be less stringent than their corresponding Federal laws, statutes, regulations and/or rules.

180. Illinois Environmental laws may be more stringent than their Federal counterparts.

181. Illinois Environmental laws, statutes, regulations and/or rules cannot be construed to be less stringent or inconsistent with the provisions of their corresponding Federal Environmental laws, statutes, regulations and/or rules.

182. The Illinois Environmental Protection Agency (hereafter "IEPA"), created by the legislature, has a mandate to conduct a program of surveillance of actual and potential contamination sources of air, water, noise and solid waste pollution.

183. Pursuant to 415 ILCS 5/4, IEPA is the agency designated as the implementing agency for the majority of the Federal Environmental Statues and permitting programs thereunder. 415 ILCS 5/4(l)

184. Section 3.315 of the Act, 415 ILCS 5/3.315, provides the following definition:

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

185. On October 20, 2017, plaintiff MARGARET RICE, was a person as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315.

186. On October 20, 2017, defendant MPC was a person as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315.

A. Violation of Title XVI. Petroleum Underground Storage Tanks (LUST)

187. Title XVI of the Act, enacted by the legislature on September 13, 1993, is known as the **Leaking Underground Storage Tank Program (LUST)**. 415 ILCS 5/57.1 – 19.

188. The Federal Underground Storage Tank (UST) (EPA) laws, statutes, rules, requirements and/or regulations are found at 42 U.S.C. Section 6912; 6991 (a)(b)(c)(d)(e)(f)(i)(k); and 40 CFR parts 280 and 281.

189. Illinois' underground storage tank (hereafter "UST" or LUST") laws, statutes, rules, requirements, and/or regulations cannot be less stringent than the Federal UST laws, statutes, rules, and/or regulations, but they may be more stringent.

190. Pursuant to The Gasoline Storage Act, 430 ILCS 15/2(1)(a) and 15/2(3)(a), the legislature has given the Office of the State Fire Marshal (hereinafter "OSFM") the

authority to promulgate rules and regulations for storage of gasoline and volatile oils, and has authority over underground storage tanks that contain or are designed to contain petroleum.

191. Pursuant to LUST, 415 ILCS 5/57.3 and 57.4 the OSFM and the IEPA divide responsibility to administer the Illinois LUST program.

192. Chapter 41 of the Illinois Administrative Code, Parts 174, 175, 176, and 177, and the Gasoline Storage Act, 430 ILCS 15/1, et seq, codifies, implements, and administers LUST and establishes the standards and requirements that owners and/or operators of gas stations and underground storage tanks must meet in order to lawfully operate in the State of Illinois.

193. LUST, 415 ILCS 5/57.1 states,

> **Applicability**
>
> (a) An owner or operator of an underground storage tank who meets the definition of this Title shall be required to conduct tank removal, abandonment and repair, site investigation and corrective action in accordance with the requirements of the Leaking Underground Storage Tank Program.

194. LUST, 415 ILCS 5/57.2 provides the following definitions:

> "**Bodily injury**" means bodily injury, sickness, or disease sustained by a person, including death at any time, resulting from a release of petroleum from an underground storage tank.
>
> "**Release**" means any spilling, leaking emitting, discharging, escaping, leaching, or disposing of petroleum from an underground storage tank into ground water, surface water or subsurface soils.
>
> "**Corrective action**" means activities associated with compliance with the provisions of Sections 57.6 and 56.7 of this Title.
>
> "**Occurrence**" means an accident, including continuous or repeated exposure to conditions, that results in a sudden or non-sudden release from an underground storage tank.

> When used in connection with, or when otherwise relating to, underground storage tanks, the terms **"facility"**, **"owner"**, **"operator"**, **"underground storage tank ("UST")"**, **"petroleum"** and **"regulated substance"** shall have the meaning ascribed to them in Subtitle I of The Hazardous and Solid Waste Amendments of 1984 of the Resource Conservation and Recovery Act of 1976 provided further...however, that the term **"owner"** shall also mean any person who has submitted to the Agency a written election to proceed under this Title and has acquired an ownership interest in a site on which one or more registered tanks have been removed, but on which corrective action has not yet resulted in the issuance of a "no further remediation letter" by the Agency pursuant to this Title.
>
> **"Property damage"** means physical injury to, destruction of, or contamination of tangible property, including all resulting loss of use of that property; or loss of use of tangible property that is not physically injured, destroyed, or contaminated but has been evacuated, withdrawn from use, or rendered inaccessible because of a release of petroleum from an underground storage tank.

195. An **underground storage tank** is defined as, "any one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of regulated substances, and the volume of which,....is 10 (percent) or more beneath the surface of the ground." 42 USC section 6991(10).

196. Owners and/or operators of underground storage tanks (hereafter "UST") as defined above must comply with both Federal UST requirements as well as the Illinois LUST laws, statutes, regulations, requirements, procedures, and/or rules implementing and/or administering LUST.

197. On October 20, 2017, defendant MPC was the owner, and/or operator, pursuant to LUST, of the UST's at Gas Station #7445.

198. During October, 2017, there was a release, pursuant to LUST, of petroleum from a UST at Gas Station #7445.

199. As a result of the release of petroleum from defendants UST located at Gas Station #7445, plaintiff, pursuant to LUST, on October 20, 2017, suffered bodily injury and burns from the explosion at her residence caused by the release.

Strict Liability

200. LUST, 415 ILCS 5/57.12(a)(1), states in part:

Underground storage tanks; enforcement; liability.

(a) Notwithstanding any other provision or rule of law, the owner or operator, or both, of an underground storage tank shall be liable for all costs of investigation, preventive action, corrective action and enforcement action incurred by the State of Illinois resulting from an underground storage tank. Nothing in this Section shall affect or modify in any way:

(1) The obligations or liability of any person under any other provision of this Act or State or federal law, including common law, for damages, injury or loss resulting from a release or substantial threat of a release as described above;

201. LUST, 415 ILCS 5/57.12(g), states:

(g) The standard of liability under this Section is the standard of liability under Section 22.2(f) of this Act.

202. 415 ILCS 5/22.2(f) of the Act, states:

(f) Notwithstanding any other provision 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 a release of a hazardous substance or pesticide:

203. Pursuant to 5/57.12(g), LUST, by adopting 5/22.2(f) of the Act as the standard of liability for violators of LUST, all persons, including owners and/or operators of a UST, who violate LUST are strictly liable for all damages incurred by members of the public, including plaintiff, who incur damages, injury and/or loss as a result of a violation of LUST.

204. Pursuant to LUST, 415 ILCS 5/57.12(a), 5/57.12(g), and 5/22.2(f) of the Act, MPC, as an owner and/or operator, by and through its agents, managers, distributors,

subsidiaries, employees, subcontractors, partnerships, and/or representatives, are strictly liable for any and all damages, injury, or loss, sustained by Plaintiff, as a result of defendants' violation(s) of LUST at Gas Station #7445.

B. DAMAGES

205. Pursuant to Title XII. of the Act, **"Penalties"**, 415 ILCS 5/42 – 5/45; persons who violate the Act, including LUST, are subject to:

(1) Civil Penalties, 415 ILCS 5/42;

(2) (Substantial danger to environment or public health; sewage works contaminants) which authorizes immediate, ex parte injunctions, 415 ILCS 5/43;

(3) Criminal Acts; penalties, 415 ILCS 5/44;

(4) (Forfeiture of gains attributable to violations), 415 ILCS 5/44.1; and/or

(5) Injunctive and other Relief, 415 ILCS 5/45.

206. Pursuant to 415 ILCS 5/42(h), In assessing plaintiff's damages under the Act for defendant's violations of LUST, the trier of fact, does, and, "Is authorized to consider any matters of record in mitigation or aggravation of penalty, including, but not limited to, the following factors:

> (1) the duration and gravity of the violation;
>
> (2) the presence or absence of due diligence on the part of the defendant in attempting to comply with requirements of this Act and the regulations thereunder or to secure relief therefrom as provided by this Act;
>
> (3) any economic benefits accrued by defendant because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
>
> (4) the amount of monetary penalty which will serve to deter

further violations by the defendant and to otherwise aid in enhancing voluntary compliance with this Act by the defendant and other persons similarly subject to the Act;

(5) the number, proximity in time, and gravity of previously adjudicated violations of this Act by the defendant;

(6) whether the defendant voluntarily self-disclosed, in accordance with subsection (i) of this Section, the noncompliance to the Agency;

(7) whether the defendant has agreed to undertake a "supplemental environmental project", which means an environmentally beneficial project that a defendant agrees to undertake in settlement of an enforcement action brought under this Act, but which the defendant is not otherwise legally required to perform; and

(8) whether a defendant has successfully completed a Compliance Commitment Agreement under subsection (a) of Section 31 of this Act to remedy the violations that are the subject of the complaint. 415 ILCS 5/42(h)

415 ILCS 5/42(h) Factors

(1) The Duration and Gravity of the Violation

207. The OSFM determined that the release of petroleum from Gas Station #7445 was "catastrophic" in nature and scope and "unprecedented" in gravity. It was, "a ridiculous amount of gasoline that was released, over a ridiculously large affected area and over a relatively short time". **See, Plaintiff's Ex. #30, 10 pages (October 20, October 22, October 23, and October 28, 2017, E-mails of Fred Schneller and Scott Johnson of OSFM.)**

208. Numerous municipalities/villages in the surrounding area were adversely affected by the release.

209. The OSFM determined that the entire 9,816 gallons of petroleum stored in 113 RUL A NORTH/OSFM #1 on October 1, 2017, had likely been released into the environment.

210. Patrick Brenn, Deputy Fire Chief of the Tri-State Fire Department District who also investigated the release and the cause of the explosion at plaintiff's residence, determined that there were at least 8,900 gallons of petroleum unaccounted for released from UST 113 RUL A NORTH/OSFM #1.

211. The OSFM, IEPA, and Tri-State Fire Department District all concluded that the explosion that caused plaintiff's injuries and burns was caused by the release of petroleum from Gas Station #7445.

212. The petroleum from 113 RUL A NORTH/OSFM #1 traveled/migrated at least seven miles from its release point at Gas Station #7445.

213. The release caused alarms to sound at the community Flagg Creek Water treatment facility, 5 miles from Gas Station #7445.

214. Seven fire departments responded to the release, with over 250 first responders being called to duty.

215. DuPage County Homeland Security emergency alarms and personnel were activated and deployed as a result of the release.

216. The Red Cross responded with personnel and aid for those members of the public adversely affected by the release.

217. Based on information, belief, research, and discovery to date, the petroleum release from Gas Station #7445, Westmont, Illinois, in October, 2017, was not only the largest in Illinois environmental history, but the second largest release of petroleum from

a single 10,000 gallon UST in the entire nation's history. **See, Plaintiff's Ex. #31 (Photograph of 10,000 gallon UST being removed from Gas Station #7445.)**

218. The release was extensively covered by broadcast, print, and internet national media as well as local Chicagoland media for an extended period of time. The occurrence was the lead story on the local ABC, CBS, NBC and FOX 10:00 p.m. news the entire weekend of October 20, 2017, with follow ups for some time thereafter. **See, Plaintiff's Ex. #32 (Media reports, 26 pages.)**

219. James R. Wilkins of MPC sent news of the release and its scope to top executives and/or officers of MPC on October 20, 2017, at 10:03 P.M. and again on October 21, 2017 at 3:46 A.M. **See, Plaintiff's Ex. #33, 4 pages (James Wilkins October 20, 2017 and October 21, 2017, E-Mail chain.)**

220. Due to the scope of the environmental emergency defendant MPC mobilized their Corporate Emergency Response Team (CERT), as well as numerous contractors, subcontractors, and consultants, consisting of hundreds of people, in response to the release. **See, Plaintiff's Ex. #33; Plaintiff's Ex. #34 (7 pages, MPC E-Mail chain of 10/20/17.)**

221. Defendant MPC, as well as their agents, including codefendant Speedway, maintained environmental remediation personnel at Gas Station #7445 through at least February, 2018, in order to complete the environmental clean-up from the petroleum release.

222. On or about October 24, 2017, the OSFM issued a Notice of Violation and the entire UST system at Gas Station #7445 was formally placed out of service by the OSFM.

223. On or about October 27, 2017, OSFM issued a permit authorizing the removal of the entire UST system at Gas Station #7445.

224. On or about November 3, 2017, due to defendants continuing to present a substantial danger to the environment and/or the public health, the Office of the Illinois Attorney General, at the request of the Illinois EPA, filed its Verified Complaint and request for immediate injunctions against co-defendant SPEEDWAY. **See, Plaintiff Ex. #35, 22 pages (State of Illinois Verified Complaint, p. 6, 7.)**

225. The verified factual matters alleged in Exhibit 35 are all true and accurate, supported by affidavits and hereby made part of this Amended Complaint.

226. On November 13, 2017, the DuPage Circuit Court filed its Agreed Immediate and Preliminary Injunction Order. **See, Plaintiff's Ex. 36, 7 pages (November 13, 2017, Agreed Immediate and Preliminary Injunction Order.)**

227. The Agreed Injunction Order reads, in part,:

> "NOW THEREFORE, Plaintiff having alleged that a substantial danger to the environment or to the health and welfare of persons exists, pursuant to Illinois Environmental Protection Act, 415 ILCS 5/1 et. seq. (2016), ("Act") and the parties having agreed to the entry of this Agreed Immediate and Preliminary Injunction Order (the "Order"), the Court enters the following immediate and preliminary injunction pursuant to Section 43(a) of the Act, Illinois Environmental Protection Act 415 ILCS 5/43(a) (2016)"

See, Plaintiff's Ex. #36, p. 1.

228. The November 13, 2017 Agreed Injunction Order ordered that SPEEDWAY LLC, among other things, submit reports and other information required by the Illinois Pollution Control Board UST Regulations, 35 Ill. Adm. Code Part 734, or as requested by the Illinois EPA. **See, Plaintiff's Ex. #36 (Immediate Injunction Order.)**

229. On December 13, 2017, SPEEDWAY filed its report detailing the cause of

the gasoline release at Gas Station #7445. **See, Plaintiff's Ex. #24 (December 13, 2017, Speedway Gasoline Release Investigation Report, 7 pages.)**

230. The Gasoline Release Investigation states:

"In summary, these findings and observations suggest that gasoline that was displaced and released from Tank No. 3, migrated through the bedding material to the northern portion of the site, and then migrated east through bedding around the storm water and sanitary lines. Finally, the gasoline migrated to the bedding around Flagg Creek WRD's north-south sanitary line on the eastern portion (easement) of the Speedway property. Gasoline likely entered into Flagg Creek WRD's north-south sanitary sewer via numerous breaches, an offset joint in the clay tile pipe north of Manhole 1597 and at manhole 1596 to the south."

See, Plaintiff's Ex. #24, p. 7.

(A) Violations from November 14, 2016 through October 20, 2017

231. 41 Illinois Administrative Code 175.810(a), states:

Temporary Closure

(a) USTs may be put into a temporary closure status provided they meet the performance standards for new UST systems or the upgrading requirements specified in 41 Ill. Adm. Code 174 through 176 and 40 CFR 280, except that spill and overfill prevention equipment requirements do not have to be met. The USTs may continue in a temporary closure status for a period of 5 years from the date of last use provided they meet the following requirements:

(1) The tank and product lines shall be emptied immediately upon placing the UST in a temporary closure status. The UST is empty when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters (one inch) of residue, or 0.3% by weight of the total capacity of the UST system, remain in the system.

(3) OSFM must receive a written request, within 30 days after the date the tank was last used, requesting temporary closure status. The request shall be submitted on a Notification for Underground Storage Tanks on OSFM forms (available at http://www2.illinois.gov/sites/sfm/About/Divisions/Petroleum-Chemical-Safety/Pages/Applications-and-

Forms.aspx.)

(6) Subject to all other applicable OSFM requirements, a UST may be put back in operation any time during the first twelve months, without meeting the requirements of subsection (d), subject to the requirement that OSFM be notified in writing on the notification for underground storage tanks form at least ten days prior to operation.

(d)(6) Prior to a tank being put back in service, all requirements for return to service must be met, and all testing and inspections passed, and a Notification for Underground Storage Tanks Forms placing the tanks "Currently in Use" must be submitted.

Violation of Gasoline Storage Act, 430 15/1 et seq.

232. The **Gasoline Storage Act**, 430 ILCS 15/1, states:

> Section 1. It shall be unlawful for any person, firm, association or corporation to keep, store, transport, sell or use any crude petroleum, benzine, benzol, gasoline, naphtha, either or other like volatile combustibles, or other compounds, in such manner or under such circumstances as will jeopardize life or property.

233. A "Red Tag" issued by OSFM on August 3, 2016, put 113 RUL A NORTH out of service due to it, "taking on water." **See, Plaintiff's Ex. #37, 2 pages (August 3, 3016, Record of Red Tag.)**

234. The Red Tag issued August 3, 2016, and signed by co-defendant MANOJ VALIATHARA, specifically prohibited any further deliveries of gasoline into 113 RUL A NORTH/OSFM Tank 1.

235. The Red Tag issued August 3, 2016, states, "DO NOT REMOVE THE RED TAG!"; Only a representative of the OSFM can remove the Red Tag. **See, Plaintiff's Ex. #37 (August 3, 2016, Red Tag, p. 2.)**

236. The Red Tag issued by OSFM to defendant SPEEDWAY on August 3, 2016, was not removed by OSFM at any time prior to the fires and explosions of October 20, 2017.

237. On August 3, 2016, a Notice of Violation was also issued to Gas Station #7445 and signed by MANOJ VALIATHARA. **See, Plaintiff's Ex. #38, 5 pages (August 3, 2016, Notice of Violation.)**

238. On September 1, 2016, OSFM ordered 113 RUL A NORTH to be emptied immediately of all petroleum. **See, Plaintiff's Ex. #39, (November 7, 2016, Notice of Violation – Progress Report.)**

239. Despite the OSFM never removing the Red Tag issued August 3, 2016, defendant MPC transported, supplied and filled 113 RUL A NORTH with over 8000 gallons of gasoline on November 14, 2016, and to it's full maximum capacity of 9,816 gallons, on January 9, 2017. **See, Plaintiff's Ex. #21, p. 5.**

240. Between August 3, 2016, and through October 20, 2017, 113 RUL A NORTH was not authorized/permitted by the OSFM to be in service or operation, including storing petroleum for any reason.

241. Defendant MPC began violating the requirements of the Red Tag issued on August 3, 2016, on November 14, 2016.

242. MPC once again violated the Red Tag when it supplied, transported, and/or delivered/pumped another 1,000 gallons of gasoline into 113 RUL A NORTH on or about January 9, 2017.

243. On or about November 7, 2016, the Office of the State Fire Marshall, Division of Petroleum Chemical Safety, received defendant Speedway #7445's

Notification For Underground Storage Tank form which identified 113 RUL A NORTH's ("OSFM #1) status, as "Temporarily out of use." **See, Plaintiff's Ex. #40, 5 pages (November 7, 2016, Notice for Underground Storage Tank.)**

244. In 2016 and 2017, 41 Ill. Adm. Code 175.810(a)(1) required that an underground storage tank be emptied immediately upon placing the underground storage tank in a temporary closure status.

245. In 2016 and 2017, 41 Ill. Adm. Code 175.810(a)(6) required that the OSFM be notified in writing on the Notification for Underground Storage Tanks form at least 10 days prior to placing a temporarily closed underground storage tank back in operation.

246. Between November 7, 2016, and November 14, 2016, MPC did not notify the OSFM in writing on the Notification for Underground Storage Tanks form pursuant to 41 Ill. Adm. Code 175.810(a)(6) that 113 RUL A NORTH (OSFM #1) was being placed in operation.

247. On or about November 14, 2016, MPC unlawfully transported, supplied and/or pumped over 8,000 gallons of regular unleaded petroleum into 113 RUL A NORTH (OSFM Tank #1) without fulfilling the requirements of 41 Ill. Adm. Code 175.810(a)(6). **See, Plaintiff's Ex. #21 (Veeder Root Automatic Tank Gauge Monitoring/Inventory Report, 14 pages; Plaintiff's Ex. 41 (October 21, 2017 E-mail from Randy Carben of OSFM to Scott Johnson.)**

248. Between November 7, 2016, and January 9, 2017, MPC, did not notify the OSFM in writing on the Notification for Underground Storage Tanks form pursuant to 41 Ill. Adm. Code 175.810(a)(6) that 113 RUL A NORTH ("OSFM Tank #1) was being placed in operation.

249. On January 9, 2017, MPC again unlawfully delivered, supplied and/or pumped over 1,000 additional gallons of gasoline into 113 RUL A NORTH ("OSFM Tank #1) without fulfilling the requirements of 41 Ill. Adm. Code 175.810(a)(6). **See, Plaintiff's Ex. #21, p. 3, 4.**

250. There were no additional deliveries of petroleum, nor any dispensing/withdrawals of petroleum at any time from 113 RUL A NORTH/OSFM #1 after January 9, 2017. **See, Plaintiff's Ex. #22 (Apparent Causal Event); and Plaintiff's Ex. #23 (Speedway Store #7445 Chronology: 10/01/17 – 10/20/17, 2 pages.)**

251. After defendant MPC's January 9, 2017, unlawful delivery of the additional 1,000 gallons of regular unleaded gasoline into 113 RUL A NORTH/OSFM #1, which increased the volume of gasoline to 9816 gallons, triggering the Veeder-Root critical priority alarm, placing 113 RUL A NORTH/OSFM #1, on Tank Maximum Product alarm, no effective corrective action was taken. Volume remained at 9816 gallons until after the fires and explosions of October 20, 2017.

252. At no time from November 4, 2016, through October 20, 2017, did MPC notify, in compliance with 41 Ill. Adm. Code 175.810, the OSFM that 113 RUL A NORTH/OSFM #1/OSFM #3 was being placed back in operation.

253. Between November 14, 2106, and October 15, 2017, MPC unlawfully stored gasoline in 113 RUL A NORTH ("OSFM #1) in violation of 41 Ill. Adm. Code 175.810 and the Gasoline Storage Act, 430 ILCS 15/1. **See, Plaintiff's Ex. #21 (Inventory Reports, November 14, 2016, January 9, 2017.)**

254. By unlawfully placing 113 RUL A NORTH/OSFM #1 back in service on or about November 14, 2016, without a permit, registration and/or license, defendant MPC

violated 41 Ill. Adm. Code 175.810(a)(6) and 430 ILCS 15.1 until October 20, 2017, for a duration of 340 days.

255. From at least October 10, 2017, until the fires and explosions on October 20, 2017, the defect at the top of 113 RUL A NORTH, allowed water to pour into 113 RUL A NORTH, through the defect.

256. 113 RUL A NORTH was full to its maximum capacity of 9,816 gallons of gasoline, before water began entering the tank in October, 2017.

257. Water will immediately displace the less dense gasoline by pushing the gasoline out of a UST, such as in 113 RUL A NORTH during October, 2017.

258. At all relevant times defendant MPC ignored active hazard alarms and did not fix the known defect or prevent the massive, protracted release of gasoline out of 113 RUL A NORTH into the environment causing harm to human health and safety, including plaintiff's, and to the environment, in violation of 430 ILCS 15.1 and 41 Ill Adm. Code 175.810.

259. Under the Act, a violation of 430 ILCS 15.1 and 41 Ill. Adm. Code 175.810 is a Class A misdemeanor. Each day is a new violation/misdemeanor.

260. 41 Ill. Adm. Code 175.700, states:

> **Repairs Allowed**
>
> Owners and operators of UST's shall ensure that repairs will prevent releases due to structural failure or corrosion as long as the UST is used to store regulated substances. Any hole or penetration made into a tank, including, but not limited to, any bung openings or any entrance way established for interior lining inspection, shall be installed and closed as per this Section.

261. Defendant MPC did not repair the defect or prevent the massive, protracted release of gasoline out of 113 RUL A NORTH into the environment causing harm to

human health and safety, including plaintiff's, and to the environment, in violation of 41 Ill Adm. Code 175.700.

262. Under the Act, a violation of 41 Ill. Adm. Code 175.700 is a Class A misdemeanor. Each day is a new violation/misdemeanor.

263. 41 Ill. Adm. Code 175.710, states:

Emergency Repairs

> An emergency consists of a defect in a UST that is causing or threatens to cause harm to human health or the environment, or presents a threat to fire safety, and contact of the regulated substance with the defect cannot be prevented. In the event of a release, release reporting, investigation and initial response shall be conducted pursuant to 41 Ill. Adm. Code 174, 175 and 176. All emergency repairs shall meet the requirements of section 175.700 and require a permit applied for after-the-fact on the next business day and require a final inspection scheduled pursuant to section 175.320 within 10 days after issuance of the permit.

264. Under the Act, a violation of 41 Ill. Adm. Code 175.710 is a Class A misdemeanor. Each day is a new violation/misdemeanor.

265. From October 1, 2017, through October 20, 2017, MPC did not request any type of permit from OSFM or IEPA regarding repairs or emergency repairs on their USTs located at Gas Station #7445 in violation of 41 Ill. Adm. Code 175.710.

266. 41 Ill. Adm. Code Section 176.300, states:

Reporting of Suspected Releases

a) Owners or operators of USTs shall immediately report to IEMA (from Illinois, 1-800-782-7860; from outside Illinois, 217-782-7860) and follow the procedures in Sections 176.310, 176.320 (b) and (c) and 176.350 in any of the following situations:

(1) The discovery by owners, operators, product delivery drivers or others of released regulated substances at the UST site or in the surrounding area (such as the presence of free product or vapors in soils, basements, sewer or utility lines or nearby surface water);

2) Unusual operating conditions observed by owners or operators (such as the erratic behavior of product dispensing equipment, the sudden loss of product from a UST or an unexplained presence of water in the tank, or liquid in the interstitial space of any secondarily contained systems),

3) Monitoring results, including investigation of an alarm, from a release detection method required under 41 Ill. Adm. Code 175.620, 175.630 or 175.640 that indicate a release may have occurred.

267. Under the Act, a violation of 41 Ill. Adm. Code 176.300 is a Class A misdemeanor. Each day is a new violation/misdemeanor.

268. The water level in 113 RUL A NORTH on September 27, 2017, at 3:45 A.M. was "0",

269. On September 27, 2017, 113 RUL A NORTH contained, and was filled to its maximum capacity, with 9,816 gallons of regular unleaded petroleum, and "0" gallons of water.

270. "0" is considered a normal water level reading for a UST storing and/or dispensing petroleum.

271. Between October 1, 2017, and October 5, 2017, the water level rose to 1.4551 inches in 113 RUL A NORTH.

272. By October 9, 2017, the water level in 113 RUL A NORTH had risen to 10.7233 inches of water.

273. The next day, October 10, 2017, at 7:45 P.M. the water level in 113 RUL A NORTH had risen to 13.2338 inches.

274. On October 11, 2017, at 7:45 P.M., the water level in 113 RUL A NORTH had more than doubled to 28.4316 inches.

275. By October 14, 2017, at 7:45 P.M. the water level in 113 RUL A NORTH had risen to 48.5987 inches.

276. On October 15, 2017, at 7:45 P.M. 113 RUL A NORTH was completely full of water, showing a water level of 93.3059 inches.

277. During October, 2017, the data on water levels, and/or various warnings and alarms from the Veeder Root/ATG System communicated a release may have occurred between October 5, 2017, through October 15, 2017, at Gas Station #7445.

278. On or about October 9, 2017, 113 RUL A NORTH/OSFM #1 Veeder Root activated the tank high water alarm. The tank high water alarm was not cleared until after the fires and explosions of October 20, 2017.

279. On October 14, 2017, when 113 RUL A NORTH was half full of water, having released thousands of gallons of petroleum into the environment, defendant MPC still had not reported a potential or suspected release of petroleum to either IEMA, OSFM, IEPA, and/or the Westmont Fire Department, in violation of 41 Ill. Adm. Code 175.300(a)(3).

280. During October, 2017, defendant MPC continued to supply, transport, and/or deliver gasoline to the UST System at Gas Station #7445.

281. MPC personnel had physical access to the ATG data on the Veeder Root located at Gas Station #7445 during October, 2017.

282. Between October 15, 2017, and before the fires and explosions of October 20, 2017, MPC did not notify the Illinois Office of State Fire Marshall, the Illinois Environmental Protection Agency, the 911 call center and/or the Village of Westmont Fire Department of the unusual UST activity and/or possible displacement, or potential, or

suspected release of gasoline out of Gas Station #7445's USTs and UST System into the environment in violation of 41 Ill. Adm. Code 175.300(a)(1).

283. At no time between October 4, 2017, and October 20, 2017, before the explosions and fires, did defendant MPC report to IEMA, OSFM, IEPA and/or the Westmont Fire Department that there may have been a release of petroleum from one of the USTs at Gas Station #7445 or that there was a substantial threat of a potential release of petroleum from 113 RUL A NORTH/OSFM #1, in violation of 41 Ill. Adm. Code 175.300(a)(3).

284. 41 Ill. Adm. Code Section 176.320, states:

Initial Response and Reporting of Confirmed Releases

Initial Response. Upon confirmation of a release of a regulated substance, owners or operators shall perform the following initial response actions:

(a) Immediately report the release.

1) The release shall be reported by calling the 911 Call Center and then IEMA in the following situations:

A) spills and overfills of petroleum products over twenty-five gallons and spills and overfills of hazardous substances over a reportable quantity as defined in 41 Ill. Adm. Code 174.100.

B) Spills, overfills or confirmed releases that present a hazard to life, for example, when observations demonstrate the presence of petroleum or hazardous substance vapors in sewers or basements or free product near utility lines, or where a sheen is present on a body of water.

285. Under the Act, a violation of 41 Ill. Adm. Code 176.320 is a Class A misdemeanor. Each day is a new violation/misdemeanor.

286. On October 9, 2017, contractor Ziron Environmental Services was dispatched to Gas Station #7445 to remove water from 113 RUL A NORTH.

287. Ziron Environmental was directed to remove only water from 113 RUL A NORTH.

288. Ziron spent hours at Gas Station #7445 on October 9, 2017, and could not remove/vacuum all the water out of 113 RUL A NORTH, stating, "RUL NORTH tank bottom will not lower below 7 inches of water." **See, Plaintiff's Ex. #42, 4 pages (October 9, 2017, Ziron work order.)**

289. Ziron Environmental Services informed the manager of Gas Station #7445 of their findings on October 9, 2017.

290. At all relevant times during October, 2017, Ziron Environmental Services, and other contractors, were directed to remove only water, not petroleum, from 113 RUL A NORTH/OSFM #1 until after the fires and explosions of October 20, 2017.

291. At all relevant times MPC had authority to order the removal of gasoline from 113 RUL A NORTH.

292. On October 10, 2017, Ziron returned to Gas Station #7445 and was directed to pump out water from 113 RUL A NORTH. Ziron pumped out approximately 1,145 gallons of water from 113 RUL A NORTH. **See, Plaintiff's Ex. #16.**

293. On October 11, 2017, UST contractors M & M Mid Valley Service and Supply and DRW Services both reported that the water level in 113 RUL A NORTH had risen 8 inches in, "a little over one hour". They could both see and hear the water, "pouring into," 113 RUL A NORTH. **See, Plaintiff's Ex. #43, 5 pages (M & M Mid Valley Records dated September 24, 2019.)**

294. Based on the Veeder Root/ATG System readings and data, that no later than October 15, 2017, water had entered 113 RUL A NORTH and entirely displaced the 9,816 gallons of petroleum that was in the tank on October 1, 2017.

295. The thousands of gallons of petroleum released from 113 RUL A NORTH, created a substantial danger and hazard to the public health and safety, including plaintiff, the environment, as well as creating fire and explosion hazards, in violation of 41 Ill. Adm. Code 176.320(a)(1)(B).

296. At no time did MPC, by and through any of its agents, employees, contractors, and/or servants, call the 911 Call Center and/or IEMA (Illinois Emergency Management Agency), to report a confirmed release of petroleum from Gas Station #7445's UST system, even after nearly ten thousand gallons of petroleum had been released from 113 RUL A NORTH/OSFM #1 between October 5, 2017, through October 15, 2017, in violation of 41 Ill. Adm. Code 176.320(a)(1)(A).

297. At no time did MPC notify OSFM, IEPA, Westmont Fire Department, or any other government agency to report a confirmed release of petroleum from 113 RUL A NORTH, even after the entire 113 RUL A NORTH/OSFM #1 was completely full of water, in violation of 41 Ill. Adm. Code 176.320(a)(1)(A).

298. 41 Ill. Adm. Code Section 176.410, states:

General Requirement to Maintain all Equipment

> All equipment and other items shall be maintained in accordance with 41 Ill. Adm. Code 174 through 176 and manufacturer's instructions and otherwise shall be kept in good operating condition at all times.

299. Under the Act, a violation under 41 Ill. Adm. Code 176.410 is a Class A misdemeanor. Each day is a new violation/misdemeanor.

300. By allowing holes, continuing corrosion, and other means of penetration to occur on the top of 113 RUL A NORTH, and, with water entering the UST, defendant MPC did not keep 113 RUL A NORTH in good operating condition during October, 2017.

Second 42(h) Factor

The presence or absence of due diligence on the part of a defendant in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act.

301. Under the first **42(h) factor** discussion above, duration and gravity of violation, the numerous LUST violations highlight the complete absence of any due diligence on the part of defendant MPC.

302. Rather than attempting to comply with the requirements of the Act and LUST, MPC ignored them, creating a substantial hazardous condition that threatened the health and safety of the general public, plaintiff, and the environment.

303. 113 RUL A NORTH remained in active, Critical Tank Maximum Product alarm and active Critical Tank High Water alarm status from October 9, 2017, until after the fires and explosions of October 20, 2017. **See, Plaintiff's Ex. #20 (Alarm History Report, Tank #3 is 113 RUL A NORTH in Ex. #20.)**

304. Every day, for 285 consecutive days, beginning on January 9, 2017, through October 20, 2017, the Veeder-Root alerted MPC that the compromised 113 RUL A NORTH contained 9,816 gallons of gasoline, 982 gallons above the UST's safe operating limit, causing the UST to be in active, unsafe, critical-priority Tank Maximum Product Alarm status.

305. The active Critical Tank Maximum Product alarms and active Critical Tank High Water alarms from October 9, 2017, until after the fires and explosions of October 20, 2017, were silenced and/or ignored by MPC.

306. MPC never sent IEPA or OSFM any documentation of any kind from January 10, 2017, through October 20, 2017, as to whether they had complied with 41 Ill. Adm. Code, 175.810(a)(6) and (d)(6) regarding the operation/service status of 113 RUL A NORTH/OSFM #1.

307. The OSFM, on August 30, 2017 and October 5, 2017, still had 113 RUL A NORTH/OSFM #1, out-of-service since November 7, 2016, when they had received SPEEDWAY's Notification for Underground Storage Tank Temporary Closure Form that took 113 RUL A NORTH temporarily out of service. **See, Plaintiff's Ex. #44, 50 pages, p 25-26 (OSFM Red Tags Tank Information; Plaintiff's Ex. #40, (November 7, 2016, Notification for Underground Storage Tank.)**

308. As a result of their continued lack of due diligence subsequent to the fires and explosions of October 20, 2017, the Illinois Attorney General, on November 3, 2017, filed a lawsuit for various other violations of the Act done by and through MPC's co-owner/operator, co-defendant Speedway, as a result of the release of petroleum from Gas Station #7445. **See, Plaintiff's Ex. #35 (State of Illinois Verified Complaint.)**

Third 42(h) Factor

Any economic benefits accrued by the defendant because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;

309. The full economic benefits accrued by defendant MPC because of their delay and noncompliance with LUST requirements, have not yet been determined.

Fourth 42(h) Factor

The amount of monetary penalty which will serve to deter further violations by the defendant and to otherwise aid in enhancing voluntary compliance with this Act by the defendant and other persons similarly subject to the Act.

310. More information and discovery is required before determining first, what amount of money will serve to deter defendant MPC from further violations of LUST and second, what amount of money will aid in enhancing voluntary compliance with the Act by MPC and deter other persons similarly subject to the Act and LUST.

Fifth 42(h) Factor

The number, proximity in time, and gravity of previously adjudicated violations of this Act by the defendant;

311. Beginning in July, 2016, if not before, defendant had similar, if not identical, defects in the same UST, 113 RUL A NORTH, which was releasing petroleum into the environment due to holes from corrosion on the top of the tank. **See, Plaintiff's Ex. #45, 13 pages, (Speedway July- August, 2016, E-Mail chain, and 2 photographs.)**

312. On August 3, 2016, co-defendant, MANOJ VALIATHARA signed an Office of Illinois State Fire Marshal Notice of Violation for the failure of two of Gas Station #7445's underground storage tanks, one of which was 113 RUL A NORTH/OSFM #1. .

See, Plaintiff's Ex. #37 and Plaintiff's Ex. #38 (August 3, 2016, Red Tag and Notice of Violation.)

313. On August 3, 2016, 113 RUL A NORTH was issued a Red Tag and taken out of service by the OSFM due to it potentially or actually releasing petroleum due to it taking on water, just as it did in October, 2017. Co-defendant, MANOJ VALIATHARA acknowledged the Red Tag. **See, Plaintiff's Ex. #37 and Plaintiff's Ex. #38.**

314. On August 23, 2016, US Tank, one of defendant's contractors, informed SPEEDWAY of water entering 113 RUL A NORTH. **See, Plaintiff's Ex. #46, 9 pages (August 23, 2016, US Tank Report to co-defendant SPEEDWAY; E-Mails of October 5, 2016; October 21, 2016.)**

315. On September 1, 2016, Gas Station #7445, 113 RUL A NORTH, received another "Red Flag Notification" from OSFM, "Due to a continued state of non-compliance that has exceeded the 60 days allowed under the Notice of Violation (NOV)." **See, Plaintiff's Ex. #47, 6 pages (September 1, 2016, Red Tag from OSFM.)**

316. The September 1, 2016, Red Flag Notification was acknowledged and signed by Gas Station #7445 Manager, Mohammed Rauf. **See, Plaintiff's Ex. #47 (September 1, 2016, Red Tag from OSFM p. 4.)**

317. Once the Red Flag Notification is attached to the UST, the tank's remaining fuel, "may be dispensed, however no fuel may be deposited into that UST." Violation can result in a $10,000.00 per day fine. **See, Plaintiff's Ex. #47.**

318. On October 14, 2016, OSFM determined defendant SPEEDWAY was not complying with the Notice of Violation and ordered UST 113 RUL A NORTH to be

emptied immediately, **See, Plaintiff's Ex. #48 (Notice of Violation – Progress Report dated October 14, 2016.)**

319. On October 14, 2016, defendant SPEEDWAY received another Notice of Violation for non-compliance, and OSFM ordered two UST's, including 113 RUL A NORTH, to be emptied immediately. **See, Plaintiff's Ex. #48 (Notice of Violation – Progress Report dated October 14, 2016.)**

320. On November 1, 2016, defendant Speedway had still failed to comply with the August 3, 2016, Red Flag Notice of Violation for "Tank 3", a/k/a 113 RUL A NORTH, having "visual corrosion holes" on top of the tank. **See, Plaintiff's Ex. #48 (Progress Report dated October 14, 2016, 3 pages.)**

321. On November 9, 2016, co-defendant, MANOJ VALIATHARA again signed an Office of Illinois State Fire Marshal Notice of Violation Progress Report regarding the failure of two of Gas Station #7445's underground storage tanks, one of which was 113 RUL A NORTH/OSFM #1. **See, Plaintiff's Ex. 49, 4 pages (UST November 9, 2016, Notices of Violations.)**

322. During 2016, no effective corrective actions were taken on the compromised 113 RUL A NORTH. **See, Plaintiff's Ex. #45 (July 28, 2016, through August 24, 2016, Speedway E-Mail chain, with 2 photographs of corrosion on the top of 113 RUL A NORTH; August 25, 2016, letter from Speedway to IEPA, 13 pages.)**

323. On November 14, 2016, and again on January 9, 2017, MPC transported, supplied, and/or delivered petroleum to 113 RUL A NORTH until it was at maximum capacity of 9,816 gallons.

324. The same structural defects found in August, 2016, continued to compromise and cause additional defects in 113 RUL A NORTH through October, 2017.

325. Defendant MPC took no effective corrective action between August 3, 2016, through October 20, 2017, to adequately repair or replace UST 113 RUL A NORTH in order to prevent potential releases of petroleum.

326. The violations found by OSFM in July – October, 2016, persisted until after the fires and explosions of October 20, 2017.

Sixth 42(h) Factor

Whether the defendant voluntarily self-disclosed, in accordance with subsection (i.) of this Section, the noncompliance to the Agency;

327. One of the overriding requirements, and strong public policy, of the Act, is for persons to voluntary self-disclose possible or potential environmental harm/damage due to potential releases of petroleum from UST's.

328. Voluntary disclosure provides a method to aid in the enforcement of the Act.

329. The Act's public policy of voluntary disclosure is to prevent harm and damage to the health and well-being of the public and to the environment.

330. Rather than voluntarily self-disclose their noncompliance with LUST, and the Gasoline Storage Act, MPC elected to immediately attempt to deceive, disrupt, and distract OSFM in their investigation of the release by providing materially false and/or concealing critical data concerning the contents of 113 RUL A NORTH.

331. On or about October 20, 2017, a member of the OSFM requested the Veeder Root/ATG "Shift Report," for October 19, and 20th, which contained the recorded information/data regarding the UST System at Gas Station #7445.

332. The Shift Report contains the UST Tank Status information, the data concerning the UST's contents, liquid levels, volumes, ullage, height, water volume, water level and temperature. **See, Plaintiff Ex. #50 (2 pages, October 23, and November 2, 2017, E-Mail chain of Aaron Siegler, Scott Johnson, Fred Schneller of OSFM.)**

Other Aggravating Factors-Violations of 415 ILCS 5/44

333. 415 ILCS 5/44(a), states:

Criminal Acts; Penalties

a) Except as otherwise provided in this Section, it shall be a Class A misdemeanor to violate this Act or regulations thereunder, or any permit or term or condition thereof, or knowingly to submit any false information under this Act or regulations adopted thereunder, or under any permit or term or condition thereof.

334. 415 ILCS 5/44(h)(3) states:

Violations; False Statements

"Any person who knowingly destroys, alters, or conceals any record required to be made by this Act in connection with the disposal, treatment, storage, or transportation of hazardous waste commits a Class 4 Felony. A second or any subsequent offense after a conviction hereunder is a Class 3 Felony".

335. 415 ILCS 5/44(h)(4.5) states:

"Any person who knowingly makes a false material statement or representation in any label, manifest, record, report, permit or license, or other document filed, maintained, or used for the purpose of compliance with Title XVI (LUST) of this Act commits a Class 4 Felony. Any second or subsequent offense which concealed critical data, after conviction hereunder is a Class 3 Felony".

336. At the time OSFM received the "Shift (Tank Status) Report" on October 20, 2017, the petroleum in 113 RUL A NORTH, according to the Veeder Root 350 ATG System for Gas Station #7445, had been completely displaced by, and was then entirely full of water, since October 15, 2017.

337. The Veeder Root/ATG Shift Report was materially altered before it was given to OSFM during their initial investigation of the scope, gravity and cause of the release from Gas Station #7445. **See, Plaintiff's Ex. #50, p. 2.**

338. The Veeder Root/Shift ATG Report, for the UST System at Gas Station #7445, provided to OSFM, concealed the information concerning the liquid contents and levels in 113 RUL A NORTH for both October 19, 2017, and October 20, 2017. **See, Plaintiff's Ex. #50, p. 2.**

339. Considering the events and circumstances of October 20, 2017, the most important information concerning the contents of UST Tank 113 RUL A NORTH was the data concerning first, the gasoline content and volume, second, the water volume by gallons, and third, the water level by inches. This information and data are omitted from the ATG readings of October 19th and October 20th of 113 RUL A NORTH requested by, and given to the OSFM.

340. By concealing this information OSFM could not initially determine the scope of the petroleum release as the tank volume showed 9816 gallons full of liquid. Only defendants knew the liquid was really water. Not petroleum. These facts were concealed on the Shift, Tank Status, Report given to OSFM. **See, Plaintiff's Ex. #50, p. 2.**

341. The Veeder Root ATG readings for the other UST's at Gas Station #7445 contain full and complete ATG information, including the readings for both the water volume and water height in each UST. **See, Plaintiff's Ex. #50, p. 2.**

342. The Shift/Tank Status Report shows every other UST at Gas Station #7445 on October 19, 2017, and October 20, 2017, with "0" gallons of water volume and "0.00" for water level by inches, which are normal findings. **See Plaintiff's Ex. #50, p. 2.**

343. By concealing the critical information/data on the real liquid contents of 113 RUL A NORTH Defendants further placed the public, and first responders, in unnecessary danger.

344. By deleting/concealing both the water volume and water level from the Shift, Tank Status, Report, submitted to OSFM, OSFM was prevented from determining how much of a release they had to contend with in regards to both public health and safety and responding to the environmental damage created by the release of petroleum.

345. At the time the Veeder Root/ATG, Shift Report was submitted to OSFM, on or about October 20, 2017, the ATG data and information concerning 113 RUL A NORTH water volume and water level were altered, concealed, false, deleted, and/or incomplete; information that OSFM and others would need to adequately investigate, and respond to, the release of petroleum from Gas Station #7445.

346. By submitting to the OSFM materially false, altered information, and concealing critical data from the Veeder Root/ATG report, concerning the gasoline and water volume and level in 113 RUL A NORTH, 415 ILCS 5/44(a); 5/44(g)(3) and 5/44(g)(4.5) were violated.

Inadequate Training and Supervision

347. 41 Ill. Adm. Code Section 176.600, is titled:

OPERATOR TRAINING.

348. 41 Ill. Adm. Code Section 176.610, **Definitions,** provides the following definitions:

> **"Certified Operator"**, means a Class A, B, or C operator who has completed all the training required under this Subpart for his or her particular operator training classification.
>
> **"Class A Operator"** is someone that has primary responsibility to operate and maintain a UST in accordance with applicable regulatory requirements. The Class A operator(s) responsibility often include managing resources and personnel, such as establishing work assignments, to achieve and maintain compliance with regulatory requirements.
>
> **"Class B Operator"** is someone who has day-to-day responsibility for implementing applicable UST regulatory requirements and standards. The Class B operatory typically implements in-fields aspects of UST operation, maintenance and record keeping at one or more UST facilities.
> **"Class C Operator"** is an employee who is responsible for initially addressing alarms or other indications of emergencies caused by spills or releases from UST's. The Class C operator typically controls or monitors the dispensing or sale of regulated substances.
>
> **"Operator Training"**, means the training required under this Subpart.
>
> **"Training program",** means any program that provides information to and evaluates the knowledge of a Class A, Class B, or Class C Operator who a combination of both training and testing approved in advanced by OSFM in meeting requirements of this Subpart F.

349. 41 Ill. Adm. Code Section 176.615, states in part:

Class A, B, and C Operator Classifications

> The owner of each UST or group of USTs at a facility must have a Class A, Class B, and Class C Operator designated and shall ensure that each is trained in accordance with this Subpart.

350. 41 Ill. Adm. Code 176.620, states:

Training

(a) A Class A, Class B, or Class C Operator satisfies the training requirements of this Subpart by completing both training and an examination, as determined to be appropriate by OSFM.

351. 41 Ill. Adm. Code 176.625, states:

Minimum Training requirements

OSFM will approve a training mechanism for Class A, Class B and Class C Operators to be implemented by OSFM approved providers. Training and related examinations under this Subpart shall cover and test for appropriate knowledge of Illinois UST regulations. Generally, Class A, B. and C Operators will be trained in the following:

a) For Class A Operators, subject matter shall include, but not be limited to, financial responsibility documentation requirements, notification requirements, release and suspected release reporting, temporary and permanent closure requirements, operator training requirements, and a general knowledge of USTs requirements, including regulations relating to spill prevention, overfill prevention, release detection, corrosion protection, emergency response, product and equipment compatibility and demonstration, environmental and regulatory consequences of releases, and related reporting, recordkeeping, testing and inspections. Class A operators must have the knowledge and skills to make informed decisions regarding compliance and to determine whether the appropriated individuals are fulfilling the operation, maintenance and recordkeeping requirements for UST systems in accordance with the subsection.

b) For Class B Operators, subject matter shall include, but not be limited to, components of UST systems, materials of UST components, methods of release detection and release prevention applied to UST components, reporting and recordkeeping requirements, operator training requirements, and the operation and maintenance requirements of USTs that relate to spill prevention, overfill prevention, release detection and related reporting, corrosion protection, emergency response and product and equipment compatibility and demonstration, environmental and regulatory consequences of releases, and related reporting, recordkeeping, testing and inspections. Training for the Class B operator must cover the general requirements that encompass all regulatory requirements and typical equipment

used at UST facilities or site-specific requirements that address only the regulatory requirements and equipment specific to the facility.

c) For Class C Operators, subject matter shall include, but not be limited to:

1) recommended responses to:

A) emergencies (such as, situations posing an immediate danger or threat to the public or to the environment requiring immediate action);

B) spill alarms; and

C) releases from a UST;

2) the locations and proper operation of emergency stops;

3) the use of other emergency equipment; and

4) notifying the appropriate authorities in response to such emergencies, alarms and releases.

352. At all relevant times Gas Station #7445 did not have any competent Class A, B or C Operators employed at Gas Station #7445.

353. The fact defendant MANOJ V. signed the OSFM Red Tag Notifications on August 3, 2016, and November 9, 2016, and then allowed petroleum to be delivered into 113 RUL A NORTH on November 14, 2016, and again on January 9, 2017, illustrate the inadequate training employed by MPC, SPEEDWAY and MANOJ V. in the operation of Gas Station #7445.

354. At all relevant times none of the employees at Gas Stations #7445 were aware of the minimal requirements of LUST and the rules and regulations promulgated by the OSFM concerning UST's through 41 Ill. Adm. Code 174, 175, 176, and 177.

355. Co-defendant MANOJ VALIATHARA was the manager of Gas Station #7445 on October 20, 2017. As such, co-defendant VALIATHARA was responsible for ensuring that all employees at the station held a Class C Operators certification and be familiar with LUST and basic rules, regulations, and procedures concerning UST's at Gas Station #7445.

356. At all relevant times the Class C operators, including co-defendant, MANOJ VALIATHARA, did not know who the designated Class A or Class B operators were for Gas Station #7445.

357. As shown supra, under the six 5/42(h) civil damages factors and 5/44 criminal violations, in 2017, Gas Station #7445 employees, including managers, did not follow and/or ignored the requirements of LUST and 41 Ill. Adm. Code 174, 175 and 176 and 430 ILCS 15.1 *et seq*. the Gasoline Storage Act.

358. On November 7, 2016, defendant SPEEDWAY sent OSFM notification that 113 RUL A NORTH was being temporarily taken out of service.

359. On November 14, 2016, MPC transported and pumped over 8000 gallons of regular unleaded petroleum into 113 RUL A NORTH/OSFM #1 when the tank was out of service and had not been registered to accept fuel pursuant to OSFM regulations, 41 Ill. Adm. Code 176.810(a).

360. On January 9, 2017, defendant MPC unlawfully pumped an additional 1,000 gallons of petroleum into 113 RUL A NORTH/OSFM #1.

361. Exceeding 95% capacity in a 10,000 gallon UST was, and is, a dangerous, illegal, and unsafe use of a UST in violation of 430 ILCS 15/1, The Gasoline Storage Act.

362. Isolated from Gas Station #7445's dispensing system, no petroleum was pumped out of 113 RUL A NORTH and the Veeder Root/ATG continually reported a total volume of 9,816 gallons of liquid, initially, petroleum, then water, in 113 RUL A NORTH from January 9, 2017, through October 20, 2017, 285 consecutive days.

363. The Veeder-Root/ATG on January 9, 2017, activated alarms placing 113 RUL A NORTH in both high product alarm and tank maximum product alarm status, which means that the fuel level in the UST had exceeded a safe working capacity.

364. A tank maximum alarm requires a critical work order requiring the alarm to be resolved within eight (8) hours of receipt.

365. On January 10, 2017, a technician responded to the critical work order generated as a result of the high product and maximum product alarms activated on January 9, 2017. The technician verified that the USTs settings and its ATG floats were working properly. The technician noted that 113 RUL A NORTH/OSFM #1 had long been "problematic," and called contractor DRW Services to investigate further, and left the work order unresolved.

366. On January 12, 2017, contractor DRW Services responded to the technician's request but was not asked to address 113 RUL A NORTH's high product and maximum product alarms.

367. Co-defendant VALIATHARA verified that the January 9, 2017, critical work order was completed when that was not true with respect to 113 RUL A NORTH/OFSM #1, which remained active in both high product and maximum product alarm status.

368. At all relevant times, pursuant to instructions from corporate headquarters, Veeder Root ATG System warnings and alarms were silenced, and then ignored, at Gas Station #7445.

369. By following corporate instructions MPC and Speedway's employees at Gas Station #7445 were rendered incompetent in following the requirements of LUST, and OSFM regulations regarding UST's.

370. At all relevant times defendant MPC and SPEEDWAY did not require Class C Operators of their USTs at Gas Station #7445 to follow the requirements of LUST and regulations thereunder.

371. From January 10, 2017, until after the fires and explosions of October 20, 2017, MPC and SPEEDWAY allowed employees at Gas Station #7445 to ignore both warnings and alarms being activated concerning obvious hazards and dangers in the UST system, including UST 113 RUL A NORTH/OFSM #1.

372. Beginning in January, 2017, the tank high product alarm and tank maximum product alarms were routinely activated, and then silenced and ignored, until after the fires and explosions of October 20, 2017.

373. On October 5, 2017, 113 RUL A NORTH/OSFM #1 high water warning was activated and again, not cleared, until after the fires and explosions of October 21, 2017.

374. On October 9, 2017, 113 RUL A NORTH Tank high water alarm was activated. It was not cleared until October 21, 2017, after the fires and explosions.

375. On October 10, 2017, it was noted by one of defendant's technicians that, "water was filling in (as fast) as it was being removed," from UST 113 RUL A NORTH.

376. October 11, 2017, was the last day MPC, or any of its agents, contractors, and/or servants performed work on 113 RUL A NORTH, despite it filling up with water and releasing petroleum into the environment and presenting a clear danger to the public health and welfare, including plaintiff.

377. During October, 2017, defendant MPC made deliveries of petroleum to the UST system at Gas Station #7445.

378. MPC personnel, when making deliveries of petroleum, had physical access to Gas Station #7445's Veeder Root/ATG System.

379. On October 11, 2017, the tank high product alarm again went off, and was again silenced, and not cleared, until after the fires and explosions of October 20, 2017.

380. On October 11, 2017, UST 113 RUL A NORTH's tank maximum product alarm was activated, and again, not cleared until after the fires and explosions of October 20, 2017.

381. On October 12, 2017, DRW sent an e-mail to Speedway headquarters, including photos taken on October 10th, with a description of 113 RUL A NORTH disrepair and the fact that the water table was above the USTs. DRW's photos showed a mixture of gasoline and water.

382. On October 15, 2017, 113 RUL A NORTH/OSFM #1 Invalid fuel level alarm was activated and, again, not cleared until after the fires and explosions of October 20, 2017.

383. At no time between October 5, 2017, and October 20, 2017, before the fires and explosions, did any employee at store #7445 call IEMA, OSFM, IEPA, Westmont Fire Department, or any other local authority, to report a potential or suspected release of

petroleum, even after the entire tank had been filled with water no later than October 15, 2017.

384. Gas Station #7445 employees, including the manager, MANOJ VALIATHARA, did not consider, or have adequate knowledge of how to respond to, a petroleum release from a UST, how to respond to emergency situations involving suspected and/or confirmed releases of petroleum, and when to notify the appropriate authorities in response to such emergencies, warnings, and alarms, concerning releases of petroleum from UST's.

385. In October, 2017, Gas Station #7445, stored an unlawful amount of petroleum in 113 RUL A NORTH; did not voluntarily disclose, remedy and/or adequately respond to potential, suspected, and/or confirmed releases of petroleum, ignored warnings, silenced alarms, ignored dangers signaled by the alarms, and then concealed the data/information concerning leaking UST's from OSFM authorities when requested after the fires and explosions of October 20, 2017. These acts and omissions in the ownership and operation of the UST system at Gas Station #7445 show a disregard of the training requirements of LUST, the OSFM, and the health and safety of the general public and environment.

Public Policy

386. In addition to the mandates and public policies stated in Article XI of the Illinois Constitution and Title I of the Act, 415 ILCS 5/2, the purpose of Civil Penalties/Damages for those persons who violate the Act, including LUST, are stated in the Policies Statement of the Illinois EPA, which states: **Compliance and Enforcement**

> "The Illinois EPA's enforcement program seeks to obtain prompt compliance with the Illinois Environmental Protection

> Act and regulations promulgated thereunder, pose a deterrent to actions that delay or prevent prompt compliance, provide an incentive for timely and responsible compliance behavior, and ensure that persons who comply with environmental requirements are not placed at a competitive disadvantage.
>
> To successfully implement its programs, the Illinois EPA uses compliance assistance and education, compliance inspections and reviews, and finally enforcement. Each is needed, and each complements the others. We all recognize that most regulated entities comply voluntarily. Others may not comply, because of a lack of information, or through negligence, or actual intent to avoid the requirements and costs that may go with them. Deterrence can only be had if the enforcement option is always available, and is pursued timely and consistently. If not timely, deterrence will be diminished by the distance in time between the violation and the pain of the penalty. If not consistently applied, fairness is lacking and competitive disadvantages may result."

Survival of Action

387. By the terms of the Act, generally, and LUST specifically, applicable and controlling case law, and the clear and strong public policy, all remedies and damages of any kind granted to, or allowed to be sought by, plaintiff decedent, MARGARET L. RICE, under the Act and LUST, survived her death; that had she survived she would have been entitled to bring an action for all remedies, damages, injuries and loss under the terms of the Act and LUST, applicable, controlling case law, and the strong public policy underlying the Act and LUST.

WHERERFORE, Plaintiff, LAURA E. RICE, as Special Representative of the Estate of MARGARET L. RICE, deceased, prays judgment be entered in her favor and against MARATHON PETROLEUM CORPORATION for its violations of the Act/LUST; plaintiff requests all damages and remedies allowed pursuant to the Act and LUST, in

excess of the minimal jurisdictional amount of the Law Division, Cook County Circuit Court.

COUNT II
VIOLATION OF ILLINOIS ENVIRONMENTAL PROTECTION ACT;
BODILY INJURY RESULTING FROM RELEASE OF PETROLEUM FROM UNDERGROUND STORAGE TANK;
STRICT LIABILITY;
SPEEDWAY, LLC

NOW COMES Plaintiff, LAURA E. RICE, as Special Representative of the Estate of MARGARET L. RICE, deceased, ("plaintiff") by and through their attorneys, BUDIN LAW OFFICES, realleges and incorporates paragraphs 1 through 172 of Facts Common To All Counts, as though fully set forth herein as Paragraphs 1 – 172 of this Count II of plaintiff's Amended Complaint at Law, complaining of defendant SPEEDWAY, LLC.

173. This Count is brought pursuant to the Illinois Environmental Protection Act, 415 ILCS 5, generally, and specifically Title XVI, Petroleum Underground Storage Tanks, 415 ILCS 5/57.1 – 19.

174. Damages are authorized pursuant to Title XII of the Act, **"Penalties"** 415 ILCS 5/42, et seq.

175. The Illinois Environmental Protection Act was borne as a result of Article XI of the Illinois Constitution, which states; Article XI, ENVIRONMENT:

> 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.
> (Source: Illinois Constitution.)
> 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.
(Source: Illinois Constitution.)

176. Title I of the Environmental Protection Act, 415 ILCS 5/2(a) states in relevant part:

"The General Assembly finds:

"(i) That environmental damage seriously endangers the public health and welfare, as more specifically described in later sections of this Act:

(ii) that because environmental damage does not respect political boundaries, it is necessary to establish a unified state-wide program for environmental protection and to cooperate fully with other States and with the United States in protecting the environment;

(iii) that air, water, and other resource pollution, public water supply, solid waste disposal, noise, and other environmental problems are closely interrelated and must be dealt with as a unified whole in order to safeguard the environment;

(v) that in order to alleviate the burden on enforcement agencies, to assure that all interests are given a full hearing, and to increase public participation of protecting the environment, private as well as governmental remedies must be provided;

(vi) that despite the existing laws and regulations concerning environmental damage there exist continuing destruction and damage to the environment and harm to the public health, safety and welfare of the people of this State, and that among the most significant sources of this destruction, damage, and harm are the improper and unsafe transportation, treatment, storage, disposal, and dumping of hazardous wastes;

(vii) that it is necessary to supplement and strengthen existing criminal sanctions regarding environmental damage, by enacting specific penalties for injury to public health and welfare in the environment.

(b) It is the purpose of this Act, as more specifically described in later sections, 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.

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

> Section, but to the extent that this Act prescribes criminal penalties, it shall be construed in accordance with the Criminal Code of 2012."

177. The Illinois Environmental Protection Act (hereafter "the Act"), is implemented and administered through 35 Illinois Administrative Code.

178. The Act, enacted June 29, 1970, is patterned after, and largely mirrors, the Federal United States Environmental Protection Act.

179. That Illinois Environmental laws, statutes, regulations, and/or rules cannot be less stringent than their corresponding Federal laws, statutes, regulations and/or rules.

180. Illinois Environmental laws may be more stringent than their Federal counterparts.

181. Illinois Environmental laws, statutes, regulations and/or rules cannot be construed to be less stringent or inconsistent with the provisions of their corresponding Federal Environmental laws, statutes, regulations and/or rules.

182. The Illinois Environmental Protection Agency (hereafter "IEPA"), created by the legislature, has a mandate to conduct a program of surveillance of actual and potential contamination sources of air, water, noise and solid waste pollution.

183. Pursuant to 415 ILCS 5/4, IEPA is the agency designated as the implementing agency for the majority of the Federal Environmental Statutes and permitting programs thereunder. 415 ILCS 5/4(l)

184. Section 3.315 of the Act, 415 ILCS 5/3.315, provides the following definition:

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

185. On October 20, 2017, plaintiff MARGARET RICE, was a person as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315.

186. On October 20, 2017, defendant SPEEDWAY was a person as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315.

A. Violation of Title XVI. Petroleum Underground Storage Tanks (LUST)

187. Title XVI of the Act, enacted by the legislature on September 13, 1993, is known as the **Leaking Underground Storage Tank Program (LUST)**. 415 ILCS 5/57.1 – 19.

188. The Federal Underground Storage Tank (EPA) laws, statutes, rules, requirements and/or regulations are found at 42 U.S.C. Section 6912; 6991 (a)(b)(c)(d)(e)(f)(i)(k); and 40 CFR parts 280 and 281.

189. Illinois' underground storage tank (hereafter "UST" or LUST") laws, statutes, rules, requirements, and/or regulations cannot be less stringent than the Federal UST laws, statutes, rules, and/or regulations, but they may be more stringent.

190. Pursuant to The Gasoline Storage Act, 430 ILCS 15/2(1)(a) and 15/2(3)(a), the legislature has given the Office of the State Fire Marshal (hereinafter "OSFM") the authority to promulgate rules and regulations for storage of gasoline and volatile oils, and has authority over underground storage tanks that contain or are designed to contain petroleum.

191. Pursuant to LUST, 415 ILCS 5/57.3 and 57.4 the OSFM and the IEPA divide responsibility to administer the Illinois LUST program.

192. Chapter 41 of the Illinois Administrative Code, Parts 174, 175, 176, and 177, and the Gasoline Storage Act, 430 ILCS 15/1, et seq, codifies, implements, and

administers LUST and establishes the standards and requirements that owners and/or operators of gas stations and underground storage tanks must meet in order to lawfully operate in the State of Illinois.

193. LUST, 415 ILCS 5/57.1 states,

Applicability

(a) An owner or operator of an underground storage tank who meets the definition of this Title shall be required to conduct tank removal, abandonment and repair, site investigation and corrective action in accordance with the requirements of the Leaking Underground Storage Tank Program.

194. LUST, 415 ILCS 5/57.2 provides the following definitions:

"**Bodily injury**" means bodily injury, sickness, or disease sustained by a person, including death at any time, resulting from a release of petroleum from an underground storage tank.

"**Release**" means any spilling, leaking emitting, discharging, escaping, leaching, or disposing of petroleum from an underground storage tank into ground water, surface water or subsurface soils.

"**Corrective action**" means activities associated with compliance with the provisions of Sections 57.6 and 56.7 of this Title.

"**Occurrence**" means an accident, including continuous or repeated exposure to conditions, that results in a sudden or non-sudden release from an underground storage tank.

When used in connection with, or when otherwise relating to, underground storage tanks, the terms "**facility**", "**owner**", "**operator**", "**underground storage tank ("UST")**", "**petroleum**" and "**regulated substance**" shall have the meaning ascribed to them in Subtitle I of The Hazardous and Solid Waste Amendments of 1984 of the Resource Conservation and Recovery Act of 1976 provided further...however, that the term "**owner**" shall also mean any person who has submitted to the Agency a written election to proceed under this Title and has acquired an ownership interest in a site on which one or more registered tanks have been removed, but on which corrective action has not yet resulted in the issuance of a "no further remediation letter" by the Agency pursuant to this Title.

"**Property damage**" means physical injury to, destruction of, or contamination of tangible property, including all resulting loss of use of that property; or loss of use

> of tangible property that is not physically injured, destroyed, or contaminated but has been evacuated, withdrawn from use, or rendered inaccessible because of a release of petroleum from an underground storage tank.

195. An **underground storage tank** is defined as, "any one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of regulated substances, and the volume of which,....is 10 (percent) or more beneath the surface of the ground." 42 USC section 6991(10).

196. Owners and/or operators of underground storage tanks as defined above must comply with both Federal UST requirements as well as the Illinois LUST laws, statutes, regulations, requirements, procedures, and/or rules implementing and/or administering LUST.

197. On October 20, 2017, defendant SPEEDWAY was the owner and/or operator, pursuant to LUST, of the UST's at Gas Station #7445.

198. During October, 2017, there was a release, pursuant to LUST, of petroleum from a UST at Gas Station #7445.

199. As a result of the release of petroleum from defendants UST located at Gas Station #7445, plaintiff, pursuant to LUST, on October 20, 2017, suffered bodily injury and burns from the explosion at her residence caused by the release.

Strict Liability

200. LUST, 415 ILCS 5/57.12(a)(1), states in part:

> **Underground storage tanks; enforcement; liability.**
>
> (a) Notwithstanding any other provision or rule of law, the owner or operator, or both, of an underground storage tank shall be liable for all costs of investigation, preventive action, corrective action and enforcement action incurred by the State of Illinois resulting from an underground storage tank. Nothing in this Section shall affect or modify in any way:

(1) The obligations or liability of any person under any other provision of this Act or State or federal law, including common law, for damages, injury or loss resulting from a release or substantial threat of a release as described above;

201. LUST, 415 ILCS 5/57.12(g), states:

(g) The standard of liability under this Section is the standard of liability under Section 22.2(f) of this Act.

202. 415 ILCS 22.2(f) of the Act, states:

(f) Notwithstanding any other provision 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 a release of a hazardous substance or pesticide:

203. Pursuant to 5/57.12(g), LUST, by adopting 22.2(f) of the Act as the standard of liability for violators of LUST, persons, including owners and/or operators of a UST, who violate LUST are strictly liable for all damages incurred by members of the public, including plaintiff, who incur damages, injury and/or loss as a result of a violation of LUST.

204. Pursuant to LUST, 415 ILCS 5/57.12(a) and 5/57.12(g), and 22(f) of the Act, SPEEDWAY, as an owner and/or operator, by and through its agents, managers, distributors, subsidiaries, employees, subcontractors, partnerships, and/or representatives, are strictly liable for any and all damages, injury, or loss, sustained by Plaintiff, as a result of defendants' violation(s) of LUST, at Gas Station #7445.

B. DAMAGES

205. Pursuant to Title XII. of the Act, **"Penalties"**, 415 ILCS 5/42 – 5/45; persons who violate the Act, including LUST, are subject to:

(1) Civil Penalties, 415 ILCS 5/42;

(2) (Substantial danger to environment or public health; sewage works contaminants) which authorizes immediate, ex parte injunctions, 415 ILCS 5/43;

(3) Criminal Acts; penalties, 415 ILCS 5/44;

(4) (Forfeiture of gains attributable to violations), 415 ILCS 5/44.1; and/or

(5) Injunctive and other Relief, 415 ILCS 5/45.

206. Pursuant to 415 ILCS 5/42(h), in assessing plaintiff's damages under the Act for defendant's violations of LUST, the trier of fact, does, and, "is authorized to consider any matters of record in mitigation or aggravation of penalty, including, but not limited to, the following factors:

> (1) the duration and gravity of the violation;
>
> (2) the presence or absence of due diligence on the part of the defendant in attempting to comply with requirements of this Act and the regulations thereunder or to secure relief therefrom as provided by this Act;
>
> (3) any economic benefits accrued by defendant because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
>
> (4) the amount of monetary penalty which will serve to deter further violations by the defendant and to otherwise aid in enhancing voluntary compliance with this Act by the defendant and other persons similarly subject to the Act;
>
> (5) the number, proximity in time, and gravity of previously adjudicated violations of this Act by the defendant;
>
> (6) whether the defendant voluntarily self-disclosed, in accordance with subsection (i) of this Section, the noncompliance to the Agency;
>
> (7) whether the defendant has agreed to undertake a "supplemental environmental project", which means an environmentally beneficial project that a defendant agrees to

undertake in settlement of an enforcement action brought under this Act, but which the defendant is not otherwise legally required to perform; and

(8) whether a defendant has successfully completed a Compliance Commitment Agreement under subsection (a) of Section 31 of this Act to remedy the violations that are the subject of the complaint. 415 ILCS 5/42(h)

415 ILCS 5/42(h) Factors

(1) The Duration and Gravity of the Violation

207. The OSFM determined that the release of petroleum from Gas Station #7445 was "catastrophic" in nature and scope and "unprecedented" in gravity. It was, "a ridiculous amount of gasoline that was released, over a ridiculously large affected area and over a relatively short time". **See, Plaintiffs Ex. #30, 10 pages (October 20, October 22, October 23, and October 28, 2017, E-mails of Fred Schneller and Scott Johnson of OSFM.)**

208. Numerous municipalities/villages in the surrounding area were adversely affected by the release.

209. The OSFM determined that the entire 9,816 gallons of petroleum stored in OSFM #1 113 RUL A NORTH on October 1, 2017, had likely been released into the environment.

210. Patrick Brenn, Deputy Fire Chief of the Tri-State Fire Department District, who also investigated the release and the cause of the explosion at plaintiff's residence, determined that there were at least 8,900 gallons of petroleum unaccounted for released from UST 113 RUL A NORTH/OSFM #1.

211. The OSFM, IEPA, and Tri-State Fire Department District all concluded that the explosion that caused plaintiff's injuries and burns was caused by the release of petroleum from Gas Station #7445.

212. The petroleum from 113 RUL A NORTH/OSFM #1 traveled/migrated at least seven miles from its release point at Gas Station #7445.

213. The release caused alarms to sound at the community Flagg Creek Water treatment facility, 5 miles from Gas Station #7445.

214. Seven fire departments responded to the release, with over 250 first responders being called to duty.

215. DuPage County Homeland Security emergency alarms and personnel were activated and deployed as a result of the release.

216. The Red Cross responded with personnel and aid for those members of the public adversely affected by the release.

217. Based on information, belief, research, and discovery to date, the petroleum release from Gas Station #7445, Westmont, Illinois, in October, 2017, was not only the largest in Illinois environmental history, but the second largest release of petroleum from a single 10,000 gallon UST in the entire nation's history. **See, Plaintiff's Ex. #31 (Photograph of 10,000 gallon UST being removed from Gas Station #7445.)**

218. The release was extensively covered by broadcast, print, and internet national media as well as local Chicagoland media for an extended period of time. The occurrence was the lead story on the local ABC, CBS, NBC and FOX 10:00 p.m. news the entire weekend of October 20, 2017, with follow ups for some time thereafter. **See, Ex. #32 (Media reports, 26 pages.)**

219. James R. Wilkins of MPC sent news of the release and its scope to top executives and/or officers of MPC on October 20, 2017, at 10:03 P.M. and again on October 21, 2017, at 3:46 A.M. **See, Plaintiff's Ex. #33, 4 pages (James Wilkins October 20, 2017 and October 21, 2017, E-Mail chain.)**

220. Due to the scope of the environmental emergency defendant SPEEDWAY assisted in mobilizing numerous contractors, subcontractors, and consultants, consisting of hundreds of people, in response to the release. **See, Plaintiff's Ex. #33, Plaintiff's Ex. #34 (7 pages, MPC E-Mail chain of 10/20/17.)**

221. Defendant SPEEDWAY, as well as their agents, kept environmental remediation personnel employed to Gas Station #7445 through at least February, 2018, in order to complete the environmental clean-up from the petroleum release.

222. On or about October 24, 2017, all UST's at Gas Station #7445 were formally placed out of service by the OSFM.

223. On or about October 27, 2017, OSFM issued a permit authorizing the removal of the entire UST system at Gas Station #7445.

224. On or about November 3, 2017, due to defendants continuing to present a substantial danger to the environment and/or the public health, the Office of the Illinois Attorney General, at the request of the Illinois EPA, filed its Verified Complaint and request for immediate injunctions against defendant SPEEDWAY. **See, Plaintiff's Ex. #35, 22 pages (State of Illinois Verified Complaint, p. 6, 7.)**

225. The verified factual matters alleged in Exhibit 35 are all true and accurate, supported by affidavits and hereby made part of this Amended Complaint.

226. On November 13, 2017, the DuPage Circuit Court filed its Agreed Immediate and Preliminary Injunction Order. **See, Plaintiff's Ex. #36, 7 pages (November 13, 2017, Agreed Immediate and Preliminary Injunction Order.)**

227. The Agreed Injunction Order reads, in part,:

> "NOW THEREFORE, Plaintiff having alleged that a substantial danger to the environment or to the health and welfare of persons exists, pursuant to Illinois Environmental Protection Act, 415 ILCS 5/1 et. seq. (2016), ("Act") and the parties having agreed to the entry of this Agreed Immediate and Preliminary Injunction Order (the "Order"), the Court enters the following immediate and preliminary injunction pursuant to Section 43(a) of the Act, Illinois Environmental Protection Act 415 ILCS 5/43(a) (2016)"

See, Plaintiff's Ex. #36, p. 1.

228. The November 13, 2017 Agreed Injunction Order ordered that SPEEDWAY LLC, among other things, submit reports and other information required by the Illinois Pollution Control Board UST Regulations, 35 Ill. Adm. Code Part 734, or as requested by the Illinois EPA. **See, Plaintiff's Ex. 36 (Immediate Injunction Order.)**

229. On December 13, 2017, SPEEDWAY filed its report detailing the cause of the gasoline release at Gas Station #7445. **See, Plaintiff's Ex. #24 (December 13, 2017, Speedway Gasoline Release Investigation Report, 7 pages.)**

230. The Gasoline Release Investigation states:

> "In summary, these findings and observations suggest that gasoline that was displaced and released from Tank No. 3, migrated through the bedding material to the northern portion of the site, and then migrated east through bedding around the storm water and sanitary lines. Finally, the gasoline migrated to the bedding around Flagg Creek WRD's north-south sanitary line on the eastern portion (easement) of the Speedway property. Gasoline likely entered into Flagg Creek WRD's north-south sanitary sewer via numerous breaches, an offset joint in the clay tile pipe north of Manhole 1597 and at manhole 1596 to the south."

See, Ex. #24 (Gasoline Release Investigation Report, p. 7.)

(A) Violations from November 14, 2016 through October 20, 2017

231. 41 Illinois Administrative Code 175.810(a), states:

Temporary Closure

(a) USTs may be put into a temporary closure status provided they meet the performance standards for new UST systems or the upgrading requirements specified in 41 Ill. Adm. Code 174 through 176 and 40 CFR 280, except that spill and overfill prevention equipment requirements do not have to be met. The USTs may continue in a temporary closure status for a period of 5 years from the date of last use provided they meet the following requirements:

(1) The tank and product lines shall be emptied immediately upon placing the UST in a temporary closure status. The UST is empty when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters (one inch) of residue, or 0.3% by weight of the total capacity of the UST system, remain in the system.

(3) OSFM must receive a written request, within 30 days after the date the tank was last used, requesting temporary closure status. The request shall be submitted on a Notification for Underground Storage Tanks on OSFM forms (available at https://www2.illinois.gov/sites/sfm/About/Divisions/Petroleum-Chemical-Safety/Pages/Applications-and-Forms.aspx.)

(6) Subject to all other applicable OSFM requirements, a UST may be put back in operation any time during the first twelve months, without meeting the requirements of subsection (d), subject to the requirement that OSFM be notified in writing on the notification for underground storage tanks form at least ten days prior to operation.

(d)(6) Prior to a tank being put back in service, all requirements for return to service must be met, and all testing and inspections passed, and a Notification for Underground Storage Tanks Forms placing the tanks "Currently in Use" must be submitted.

Violation of Gasoline Storage Act, 430 15/1 et seq.

232. The **Gasoline Storage Act**, 430 ILCS 15/1, states:

> Section 1. It shall be unlawful for any person, firm, association or corporation to keep, store, transport, sell or use any crude petroleum, benzine, benzol, gasoline, naphtha, either or other like volatile combustibles, or other compounds, in such manner or under such circumstances as will jeopardize life or property.

233. A "Red Tag" issued by OSFM on August 3, 2016, put 113 RUL A NORTH out of service due to it, "taking on water." **See, Plaintiff's Ex. #37 (August 3, 2016, Record of Red Tag, 2 pages.)**

234. The Red Tag issued August 3, 2016, and signed by co-defendant MANOJ VALIATHARA, specifically prohibited any further deliveries of gasoline into 113 RUL A NORTH/OSFM Tank 1.

235. The Red Tag issued August 3, 2016, states, "DO NOT REMOVE THE RED TAG!"; Only a representative of the OSFM can remove the Red Tag. **See, Plaintiff's Ex. #37 (August 3, 2016, Red Tag, p. 2.)**

236. The Red Tag issued by OSFM to defendant SPEEDWAY on August 3, 2016, for 113 RUL A NORTH/OSFM #1, was not removed by OSFM at any time prior to the fires and explosions of October 20, 2017.

237. On August 3, 2016, a Notice of Violation was also issued to Gas Station #7445 and signed by MANOJ VALIATHARA. **See, Plaintiff's Ex. #38, 5 pages (August 3, 2016, Notice of Violation.)**

238. On September 1, 2016, OSFM ordered 113 RUL A NORTH to be emptied immediately of all petroleum. **See, Plaintiff's Ex. #39 (Notice of Violation – Progress Report.)**

239. Despite the OSFM never removing the Red Tag issued August 3, 2016, defendant MPC transported, supplied and filled 113 RUL A NORTH with over 8000

gallons of gasoline, on November 14, 2016, and to it's full maximum capacity of 9,816 gallons, on January 9, 2017. **See, Plaintiff's Ex. #21, p. 5.**

240. Between August 3, 2016, and through October 20, 2017, 113 RUL A NORTH was not authorized/permitted by the OSFM to be in service or operation, including storing petroleum for any reason.

241. Defendant SPEEDWAY began violating the requirements of the Red Tag Issued on August 3, 2016, on November 14, 2016.

242. SPEEDWAY once again violated the Red Tag when it supplied, transported, and/or delivered/pumped another 1,000 gallons of gasoline into 113 RUL A NORTH on or about January 9, 2017.

243. On or about November 7, 2016, the Office of the State Fire Marshall, Division of Petroleum Chemical Safety, received defendant Speedway #7445's Notification For Underground Storage Tank form which identified 113 RUL A NORTH's ("OSFM Tank 1, OSFM #1) status as, "Temporarily out of use." **See, Plaintiff's Ex. #40, 5 pages (November 7, 2016, Notice for Underground Storage Tank.)**

244. In 2016 and 2017, 41 Ill. Adm. Code 175.810(a)(1) required that an underground storage tank be emptied immediately upon placing the underground storage tank in a temporary closure status.

245. In 2016 and 2017, 41 Ill. Adm. Code 175.810(a)(6) required that the OSFM be notified in writing on the Notification for Underground Storage Tanks form at least 10 days prior to placing a temporarily closed underground storage tank back in operation.

246. Between November 7, 2016, and November 14, 2016, SPEEDWAY did not notify the OSFM in writing on the Notification for Underground Storage Tanks form

pursuant to 41 Ill. Adm. Code 175.810(a)(6) that 113 RUL A NORTH (OSFM #1) was being placed back in operation/service.

247. On or about November 14, 2016, SPEEDWAY allowed MPC to unlawfully transport, supply and/or pump over 8,000 gallons of regular unleaded petroleum into 113 RUL A NORTH (OSFM Tank #1) without fulfilling the requirements of 41 Ill. Adm. Code 175.810(a)(6). **See, Plaintiff's Ex. #21 (Veeder Root Automatic Tank Gauge Monitoring/Inventory Report, 14 pages); Plaintiff's Ex. #41, (October 21, 2017, E-mail from Randy Carben of OSFM to Scott Johnson.)**

248. Between November 7, 2016, and January 9, 2017, SPEEDWAY, did not notify the OSFM in writing on the Notification for Underground Storage Tanks form pursuant to 41 Ill. Adm. Code 175.810(a)(6) that 113 RUL A NORTH ("OSFM Tank #1) was being placed in operation.

249. At no time from January 9, 2017, did SPEEDWAY notify the OSFM 113 RUL A NORTH/OSFM #1 was being placed back in operation.

250. On January 9, 2017, with Speedway's knowledge, MPC again unlawfully delivered, supplied and/or pumped over 1,000 additional gallons of gasoline into 113 RUL A NORTH ("OSFM #1) without fulfilling the requirements of 41 Ill. Adm. Code 175.810(a)(6). **See, Plaintiff's Ex. #21 (Inventory report, p. 3, 4.)**

251. There were no additional deliveries of petroleum, nor any dispensing/withdrawals of petroleum at any time from 113 RUL A NORTH/OSFM #1 after January 9, 2017. **See, Plaintiff's Ex. #22 (Apparent Causal Events) and Plaintiff's Ex. #23 (Speedway Store #7445 Chronology: 10/01/17 – 10/20/17, 2 pages.)**

252. After the January 9, 2017, unlawful delivery of the additional 1,000 gallons of regular unleaded gasoline by defendant MPC into 113 RUL A NORTH/OSFM #1 the Veeder-Root activated alarms placing 113 RUL A NORTH/OSFM #1, on (1) High Product alarm and (2) Tank Maximum Product alarm.

253. Between November 14, 2106, and October 15, 2017, SPEEDWAY unlawfully stored gasoline in 113 RUL A NORTH ("OSFM Tank #1) in violation of 41 Ill. Adm. Code 175.810 and the Gasoline Storage Act, 430 ILCS 15/1. **See, Plaintiff's Ex. #21 (Inventory Reports, November 14, 2016, January 9, 2017.)**

254. By unlawfully placing 113 RUL A NORTH/OSFM #1 back in service on or about November 14, 2016, without a permit, registration and/or license, defendant SPEEDWAY violated 41 Ill. Adm. Code 175.810(a)(6) and 430 ILCS 15.1 until October 20, 2017, for a duration of 340 days.

255. Beginning no later than October 10, 2017, the defect at the top of 113 RUL A NORTH, allowed water to pour into 113 RUL A NORTH, through the defect.

256. Before water began entering the tank 113 RUL A NORTH was full to its maximum capacity of 9,816 gallons of gasoline.

257. Water will immediately displace the less dense gasoline by pushing the gasoline out a UST, such as 113 RUL A NORTH, in October, 2017.

258. At all relevant times defendant SPEEDWAY ignored active hazard warnings and alarms and did not repair the known defect or prevent the massive, protracted release of gasoline out of 113 RUL A NORTH into the environment causing harm to human health and safety, including plaintiff's, and to the environment, in violation of 430 ILCS 15.1 and 41 Ill. Adm. Code 175.810.

259. Under the Act, a violation of 430 ILCS 15.1 and 41 Ill. Adm. Code 175.810 is a Class A misdemeanor. Each day is a new violation/misdemeanor.

260. 41 Ill. Adm. Code 175.700, states:

Repairs Allowed

> Owners and operators of UST's shall ensure that repairs will prevent releases due to structural failure or corrosion as long as the UST is used to store regulated substances. Any hole or penetration made into a tank, including, but not limited to, any bung openings or any entrance way established for interior lining inspection, shall be installed and closed as per this Section.

261. Under the Act, a violation of 41 Ill. Adm. Code 175.700 is a Class A misdemeanor. Each day is a new violation/misdemeanor.

262. Defendant SPEEDWAY did not repair the defect or prevent the massive, protracted release of gasoline out of 113 RUL A NORTH into the environment causing harm to human health and safety, including plaintiff's, and to the environment, in violation of 41 Ill. Adm. Code 175.700.

263. 41 Ill. Adm. Code 175.710, states:

Emergency Repairs

> An emergency consists of a defect in a UST that is causing or threatens to cause harm to human health or the environment, or presents a threat to fire safety, and contact of the regulated substance with the defect cannot be prevented. In the event of a release, release reporting, investigation and initial response shall be conducted pursuant to 41 Ill. Adm. Code 174, 175 and 176. All emergency repairs shall meet the requirements of section 175.700 and require a permit applied for after-the-fact on the next business day and require a final inspection scheduled pursuant to section 175.320 within 10 days after issuance of the permit.

264. Under the Act, a violation of 41 Ill. Adm. Code 175.710 is a Class A misdemeanor. Each day is a new violation/misdemeanor.

265. During October, 2017, the defect at the top of 113 RUL A NORTH, allowed water to pour into 113 RUL A NORTH through the defect.

266. From October 1, 2017, through October 20, 2017, SPEEDWAY did not request any type of permit from OSFM or IEPA regarding repairs or emergency repairs on their USTs located at Gas Station #7445, in violation of 41 Ill. Adm. Code 175.700 and 175.710.

267. 41 Ill. Adm. Code Section 176.300, states:

Reporting of Suspected Releases

a) Owners or operators of USTs shall immediately report to IEMA (from Illinois, 1-800-782-7860; from outside Illinois, 217-782-7860) and follow the procedures in Sections 176.310, 176.320 (b) and (c) and 176.350 in any of the following situations:

(1) The discovery by owners, operators, product delivery drivers or others of released regulated substances at the UST site or in the surrounding area (such as the presence of free product or vapors in soils, basements, sewer or utility lines or nearby surface water);

2) Unusual operating conditions observed by owners or operators (such as the erratic behavior of product dispensing equipment, the sudden loss of product from a UST or an unexplained presence of water in the tank, or liquid in the interstitial space of any secondarily contained systems),

3) Monitoring results, including investigation of an alarm, from a release detection method required under 41 Ill. Adm. Code 175.620, 175.630 or 175.640 that indicate a release may have occurred.

268. Under the Act, a violation of 41 Ill. Adm. Code 176.300 is a Class A misdemeanor. Each day is a new violation/misdemeanor.

269. The water level in 113 RUL A NORTH on September 27, 2017, at 3:45 A.M. was "0", and filled to its maximum capacity, with 9,816 gallons of regular unleaded petroleum.

270. "0" is considered a normal water level reading for a UST storing petroleum.

271. Between October 1, 2017, and October 5, 2017, the water level rose to 1.4551 inches in 113 RUL A NORTH.

272. By October 9, 2017, the water level in 113 RUL A NORTH had risen to 10.7233 inches of water.

273. The next day, October 10, 2017, at 7:45 P.M. the water level in 113 RUL A NORTH/OSFM #1had risen to 13.2338 inches.

274. On October 11, 2017, at 7:45 P.M., the water level in 113 RUL A NORTH had more than doubled to 28.4316 inches.

275. By October 14, 2017, at 7:45 P.M. the water level in 113 RUL A NORTH had risen to 48.5987 inches.

276. On October 15, 2017, at 7:45 P.M. 113 RUL A NORTH was completely full of water, showing a water level of 93.3059 inches.

277. The data on water levels, and various warnings and alarms from the Veeder Root/ATG System during October, 2017, indicate a release may have occurred between October 5, 2017, through October 15, 2017.

278. On or about October 9, 2017, 113 RUL A NORTH/OSFM #1 Veeder Root activated the tank high water alarm. The tank high water alarm was not cleared until after the fires and explosions of October 20, 2017.

279. On October 14, 2017, when 113 RUL A NORTH was half full of water, having released thousands of gallons of petroleum into the environment, defendant SPEEDWAY still had not reported a potential or suspected release of petroleum to either IEMA, OSFM, IEPA, and/or the Westmont Fire Department, in violation of 41 Ill. Adm. Code 176.300(a)(1).

280. During October, 2017, co-defendant MPC continued to transport and deliver gasoline to the UST System at Gas Station #7445.

281. SPEEDWAY had physical access to the ATG data on the Veeder Root located at Gas Station #7445 at all times.

282. Between October 15, 2017, and before the fires and explosions of October 20, 2017, SPEEDWAY did not notify the Illinois Office of State Fire Marshall, the Illinois Environmental Protection Agency, the 911 call center and/or the Village of Westmont Fire Department of the unusual UST activity and/or possible displacement, or potential, or suspected release of gasoline out of Gas Station #7445's USTs and UST System into the environment in violation of 41 Ill. Adm. Code 175.300(a)(2).

283. At no time between October 4, 2017, and October 20, 2017, before the explosions and fires, did defendant SPEEDWAY report to IEMA, OSFM, IEPA and/or the Westmont Fire Department that there may have been a release of petroleum from one of the USTs at Gas Station #7445 or that there was a substantial threat of a potential release of petroleum from 113 RUL A NORTH/OSFM #1, in violation of 41 Ill. Adm. Code 175.300(a)(1)(3).

284. 41 Ill. Adm. Code Section 176.320, states:

Initial Response and Reporting of Confirmed Releases

Initial Response. Upon confirmation of a release of a regulated substance, owners or operators shall perform the following initial response actions:

(a) Immediately report the release.

1) The release shall be reported by calling the 911 Call Center and then IEMA in the following situations:

A) spills and overfills of petroleum products over twenty-five gallons and spills and overfills of hazardous substances over a reportable quantity as defined in 41 Ill. Adm. Code 174.100.

B) Spills, overfills or confirmed releases that present a hazard to life, for example, when observations demonstrate the presence of petroleum or hazardous substance vapors in sewers or basements or free product near utility lines, or where a sheen is present on a body of water.

285. Under the Act, a violation of 41 Ill. Adm. Code 176.320 is a Class A misdemeanor. Each day is a new violation/misdemeanor.

286. On October 9, 2017, contractor Ziron Environmental Services was dispatched to Gas Station #7445 to remove water from 113 RUL A NORTH.

287. Ziron Environmental was directed to remove only water from 113 RUL A NORTH.

288. Ziron personnel spent hours at Gas Station #7445 on October 9, 2017, and could not remove/vacuum all the water out of 113 RUL A NORTH, stating, "RUL NORTH tank bottom will not lower below 7 inches of water." **See, Plaintiff's Ex. #42, 4 pages (October 9, 2017, Ziron work order.)**

289. Ziron Environmental Services informed the SPEEDWAY manager of Gas Station #7445 of their findings on October 9, 2017.

290. At all relevant times, Ziron Environmental Services, and other contractors, were directed to remove only water, not petroleum, from 113 RUL A NORTH/OSFM #1 until after the fires and explosions of October 20, 2017.

291. SPEEDWAY had authority to order the removal of gasoline from 113 RUL A NORTH, at all relevant times.

292. On October 10, 2017, Ziron returned to Gas Station #7445 and was directed to pump out only water from RUL A NORTH. Ziron pumped out approximately 1,145 gallons of water from 113 RUL A NORTH. **See, Plaintiff's Ex. #16.**

293. On October 11, 2017, UST contractors M & M Mid Valley Service and Supply and DRW Services both reported to SPEEDWAY that the water level in 113 RUL A NORTH had risen 8 inches in, "a little over one hour". They could both see and hear the water, "pouring into," 113 RUL A NORTH. **See, Plaintiff's Ex. #43, 5 pages (M & M Mid Valley Records dated September 24, 2019.)**

294. Based on the Veeder Root/ATG System readings and data, that no later than October 15, 2017, water had entered 113 RUL A NORTH and entirely displaced the 9,816 gallons of petroleum that was in the tank on October 1, 2017.

295. At no time did SPEEDWAY, by and through any of its agents, employees, contractors, and/or servants, call the 911 Call Center and/or IEMA (Illinois Emergency Management Agency), to report a confirmed release of petroleum from Gas Station #7445's UST system, even after nearly ten thousand gallons of petroleum had been released from 113 RUL A NORTH/OSFM #1 between October 5, 2017, through October 15, 2017, in violation of 41 Ill. Adm. Code Section 176.320(a)(1)(A).

296. At no time did SPEEDWAY notify OSFM, IEPA, Westmont Fire Department, or call the 911 Call Center, or any other government agency to report a confirmed release of petroleum from 113 RUL A NORTH, even after the entire 113 RUL A NORTH/OSFM #1 was completely full of water, in violation of 41 Ill. Adm. Code Section 176.320(a)(1)(B).

297. 41 Ill. Adm. Code Section 176.410, states:

General Requirement to Maintain all Equipment

> All equipment and other items shall be maintained in accordance with 41 Ill. Adm. Code 174 through 176 and manufacturer's instructions and otherwise shall be kept in good operating condition at all times.

298. Under the Act, a violation of41 Ill. Adm. Code 176.410 is a Class A misdemeanor. Each day is a new violation/misdemeanor.

299. By allowing holes, continuing corrosion, and other means of penetration to occur on the top of 113 RUL A NORTH, and, with water entering the UST, defendant SPEEDWAY did not keep 113 RUL A NORTH in good operating condition during October, 2017, in violation of 41 Ill. Adm. Code 176.410.

Second 42(h) Factor

The presence or absence of due diligence on the part of a defendant in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act.

300. Under the first **42(h) factor** discussion above, duration and gravity of violation, the numerous LUST violations highlight the complete absence of any due diligence on the part of defendant SPEEDWAY.

301. At all relevant times, rather than attempting to comply with the requirements of the Act and LUST, SPEEDWAY ignored them, creating a substantial hazardous condition that threatened the health and safety of the general public, the environment, and plaintiff.

302. The morning of January 9, 2017, SPEEDWAY added an additional 1,000 gallons of gasoline to the compromised 113 RUL A NORTH, increasing the total amount of gasoline in the UST to its maximum capacity of 9,816 gallons, which is 982 gallons above safe operating limits.

303. On the morning of January 9, 2017, shortly after SPEEDWAY filled the compromised 113 RUL A NORTH to its maximum capacity of 9,816 gallons of gasoline, the UST's Automatic Tank Gauge activated a critical-priority Tank Maximum Product Alarm, which simultaneously communicated the critical-priority alarm to SPEEDWAY through the Veeder-Root's real-time electronic reporting.

304. Every day, for 285 consecutive days, beginning on January 9, 2017, through October 20, 2017, the Veeder-Root alerted SPEEDWAY that the compromised 113 RUL A NORTH contained 9,816 gallons of gasoline, 982 gallons above the UST's safe operating limit, causing the UST to be in active, unsafe, critical-priority Tank Maximum Product Alarm status.

305. Speedway, LLC did not respond to an email inquiry they received from OSFM Office Associate Mary Torricelli sent on or about August 30, 2017, to Speedway LLC personnel Katie L. Allen and Speedway LLC manager Eric M. Swaisgood requesting an update on the operating/service status of RUL A NORTH ("OSFM Tank #1) and other "noticed discrepancies," for which the OSFM needed information. **See, Plaintiff's Ex. #52**

(Mary Torricelli of OSFM E-Mails of August 30, 2017, August 31, 2017, and October 5, 2017, 10 pages.)

306. Speedway LLC did not respond to a second email inquiry that was sent and received on or about October 5, 2017, from OSFM Office Associate Mary Torricelli to Speedway LLC personnel Katie L. Allen and Speedway LLC manager Eric M. Swaisgood again requesting an update on the operation/service status of 113 RUL A NORTH ("OSFM Tank #1), due to defendant having filed a Notification for UST's received by OSFM on or about August 21, 2017, showing 113 RUL A NORTH back in service. **See, Plaintiff's Ex. #52, p. 3.**

307. No person from SPEEDWAY ever responded to the two email inquiries from OSFM Associate Mary Torricelli whether 113 RUL A NORTH/OSFM #1 was in service or out-of-service.

308. The OSFM, on August 30, 2017 and October 5, 2017, still had 113 RUL A NORTH/OSFM #1, out-of-service since November 7, 2016, when they had received SPEEDWAY's Notification for Underground Storage Tank Temporary Closure Form that took 113 RUL A NORTH temporary out of service. **See, Plaintiff's Ex. #44 50 pages, p. 25-26, (OSFM Red Tags Tank Information); Plaintiff's Ex. #40, (November 7, 2016, Notification for Underground Storage Tank, 5 pages.)**

309. As a result of their continued lack of due diligence subsequent to the fires and explosions of October 20, 2017, the Illinois Attorney General, on November 3, 2017, filed a lawsuit for various other violations of the Act, by defendant SPEEDWAY, as a result of the release of petroleum from Gas Station #7445. **See, Plaintiff's Ex. 35- State of Illinois Verified Complaint.**

Third 42(h) Factor

Any economic benefits accrued by the defendant because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;

310. The full economic benefits accrued by defendant SPEEDWAY because of their delay, and noncompliance with LUST, have yet to be determined.

Fourth 42(h) Factor

The amount of monetary penalty which will serve to deter further violations by the defendant and to otherwise aid in enhancing voluntary compliance with this Act by the defendant and other persons similarly subject to the Act.

311. More information and discovery is required before determining first, what amount of money will serve to deter defendant SPEEDWAY from further violations and second, what amount of money will aid in enhancing voluntary compliance with the Act by SPEEDWAY and deter other persons similarly subject to the Act and LUST.

Fifth 42(h) Factor

The number, proximity in time, and gravity of previously adjudicated violations of this Act by the defendant;

312. Beginning in July, 2016, if not before, defendant had knowledge of similar, if not identical, defects in the same UST, 113 RUL A NORTH, which was releasing petroleum into the environment due to holes from corrosion on the top of the tank. **See,**

Plaintiff's Ex. #45, 13 pages (Speedway July- August, 2016, E-Mail chain, and 2 photographs.)

313. On August 3, 2016, co-defendant, MANOJ VALIATHARA signed an Office of Illinois State Fire Marshal Notice of Violation for the failure of two of Gas Station #7445's underground storage tanks, one of which was 113 RUL A NORTH/OSFM#1. He also signed the Red Tag Notification issued August 3, 2016. **See, Plaintiff's Ex. #37 and #38 (August 3, 2016, Red Tag and Notice of Violation.)**

314. On August 3, 2016, 113 RUL A NORTH was taken out of service and issued a Red Flag by the OSFM due to it releasing petroleum, just as it did in October, 2017. Co-defendant, MANOJ VALIATHARA acknowledged the Red Tag. **See, Plaintiff's Ex. #37 and #38.**

315. On August 23, 2016, US Tank, one of defendant's contractors informed SPEEDWAY of water entering 113 RUL A NORTH. **See, Plaintiff's Ex. #46, 9 pages (August 23, 2016, US Tank Report to co-defendant SPEEDWAY; E-Mails of October 5, 2016; October 21, 2016.)**

316. On September 1, 2016, Gas Station #7445, 113 RUL A NORTH, received another "Red Flag Notification" from OSFM, "Due to a continued state of non-compliance that has exceeded the 60 days allowed under the Notice of Violation (NOV)." **See, Plaintiff's Ex. #47, 6 pages (September 1, 2016, Red Tag from OSFM.)**

317. The September 1, 2016, Red Flag Notification was acknowledged and signed by Gas Station #7445 Manager, Mohammed Rauf. **See, Plaintiff's Ex. #47 (September 1, 2016, Red Tag from OSFM, p. 4.)**

318. Once the Red Flag Notification is attached to the UST, the tank's remaining fuel, "may be dispensed, however no fuel may be deposited into that UST." Violation can result in a $10,000.00 per day fine. **See, Plaintiff's Ex. #47**

319. On October 14, 2016, OSFM determined defendant SPEEDWAY was still not complying with the Notice of Violation and OSFM ordered UST 113 RUL A NORTH to be emptied immediately, **See, Plaintiff's Ex. #48 (Notice of Violation – Progress Report dated October 14, 2016.)**

320. On October 14, 2016, defendant SPEEDWAY received another Notice of Violation for non-compliance, and ordered two UST's, including 113 RUL A NORTH, to be emptied immediately. **See, Plaintiff's Ex. #48 (Notice of Violation – Progress Report dated October 14, 2016.)**

321. On November 1, 2016, defendant Speedway had still failed to comply with the August 3, 2016, Red Flag Notice of Violation with "Tank 3", a/k/a 113 RUL A NORTH, having, "visual corrosion holes" on top of the tank. **See, Plaintiff's Ex. #48 (Progress Report dated October 14, 2016, 3 pages.)**

322. On November 9, 2016, co-defendant, MANOJ VALIATHARA again signed an Office of Illinois State Fire Marshal Notice of Violation Progress Report regarding the failure of two of Gas Station #7445's underground storage tanks, one of which was 113 RUL A NORTH/OSFM #1. **See, Plaintiff's Ex. #49, 4 pages (UST November 9, 2016, Notices of Violations.)**

323. During 2016, no effective corrective actions were taken on compromised 113 RUL A NORTH. **See, Plaintiff's Ex. #45 (July 28, 2016 through August 24, 2016,**

Speedway E-Mail chain, with 2 photographs of corrosion on the top of 113 RUL A NORTH; August 25, 2016, letter from Speedway to IEPA, 13 pages.)

324. On November 14, 2016, and again on January 9, 2017, SPEEDWAY allowed MPC to transport, supply, and/or deliver petroleum to 113 RUL A NORTH until it was at maximum capacity of 9,816 gallons.

325. The same structural defects found in August, 2016, continued to compromise and cause additional defects in 113 RUL A NORTH through October, 2017.

326. Defendant SPEEDWAY took no effective corrective action between August 3, 2016, through October 20, 2017, to adequately repair or replace UST 113 RUL A NORTH in order to prevent potential releases of petroleum.

327. The violations found by OSFM in July – October, 2016, persisted until after the fires and explosions of October 20, 2017.

Sixth 42(h) Factor

Whether the defendant voluntarily self-disclosed, in accordance with subsection (i.) of this Section, the noncompliance to the Agency;

328. One of the overriding requirements, and strong public policy, of the Act, is for persons to voluntary self-disclose possible or potential environmental issues/problems due to potential releases of petroleum from UST's.

329. Voluntary disclosure provides a method to aid in the enforcement of the Act.

330. The Act's requirements, and public policy, of voluntary disclosure is to prevent harm and damage to the health and well-being of the public and to the environment.

331. Rather than self-disclose their noncompliance with LUST, and the Gasoline Storage Act, SPEEDWAY elected to immediately attempt to deceive, disrupt, and distract OSFM in their investigation of the release by providing materially false and/or concealing critical data concerning the contents of 113 RUL A NORTH.

332. On or about October 20, 2017, a member of the OSFM requested the Veeder Root/ATG "Shift Report" for October 19, and 20th, which contained the recorded information/data regarding the UST System at Gas Station #7445.

333. The Shift Report contains the UST Tank Status information and data concerning each UST's contents, liquid levels, volumes, ullage, height, water volume, water level and temperature at Gas Station #7445 on October 19, and 20, 2017. **(2 pages, October 23, and November 2, 2017, E-Mail chain of Aaron Siegler, Scott Johnson, Fred Schneller of OSFM.)**

Other Aggravating Factors-Violations of 415 ILCS 5/44

334. 415 ILCS 5/44(a), states:

Criminal Acts; Penalties

> a) Except as otherwise provided in this Section, it shall be a Class A misdemeanor to violate this Act or regulations thereunder, or any permit or term or condition thereof, or knowingly to submit any false information under this Act or regulations adopted thereunder, or under any permit or term or condition thereof.

335. 415 ILCS 5/44(h)(3) states:

Violations; False Statements

> "Any person who knowingly destroys, alters, or conceals any record required to be made by this Act in connection with the disposal, treatment, storage, or transportation of hazardous waste commits a Class 4 Felony. A second or any subsequent offense after a conviction hereunder is a Class 3 Felony".

336. 415 ILCS 5/44(h)(4.5) states:

> "Any person who knowingly makes a false material statement or representation in any label, manifest, record, report, permit or license, or other document filed, maintained, or used for the purpose of compliance with Title XVI of this Act commits a Class 4 Felony. Any second or subsequent offense which concealed critical data, after conviction hereunder is a Class 3 Felony".

337. At the time OSFM received the "Shift (Tank Status) Report" on October 20, 2017, the petroleum in 113 RUL A NORTH, according to the Veeder Root 350 ATG System for Gas Station #7445, had been completely displaced by, and entirely full of, water, since October 15, 2017.

338. The Veeder Root/ATG Shift Report was materially altered before it was given to OSFM during their initial investigation of the scope, gravity and cause of the release from Gas Station #7445. **See, Plaintiff's Ex. #50, p. 2.**

339. The Veeder Root/Shift ATG Report, for the UST System at Gas Station #7445 provided to OSFM, concealed the information concerning the liquid contents and levels in 113 RUL A NORTH for both October 19, 2017, and October 20, 2017. **See, Plaintiff's Ex. #50, p. 2.**

340. Considering the events and circumstances of October 20, 2017, the most important information concerning the contents of UST Tank 113 RUL A NORTH was the data concerning first, the gasoline content and volume, second, the water volume by gallons, and third, the water level by inches. This information and data are omitted from the ATG readings of October 19th and October 20th of 113 RUL A NORTH requested by and given to the OSFM.

341. By concealing this information OSFM could not initially determine the scope of the petroleum release as the tank volume showed 9816 gallons full of liquid. Only

defendants knew the liquid was really water. Not petroleum. These facts were concealed on the Shift, Tank Status, Report given to OSFM. **See, Plaintiff's Ex. #50, p. 2.**

342. The Veeder Root ATG readings for the other UST's at Gas Station #7445 contain the full and complete ATG information, including the readings for both the water volume and water height in each UST. **See, Plaintiff's Ex. #50, p. 2.**

343. The Shift/Tank Status Report shows every other UST at Gas Station #7445 on October 19, 2017, and October 20, 2017, with "0" gallons of water volume and "0.00" for water level by inches, which are normal findings. **See, Plaintiff's Ex. #50, p. 2.**

344. By concealing the critical information/data on the real liquid contents of 113 RUL A NORTH Defendants further placed the public, and first responders, in unnecessary danger.

345. By concealing both the water volume and water level of 113 RUL A NORTH from the Shift, Tank Status Report, submitted to OSFM, OSFM was prevented from determining how much of a release they had to contend with in regards to both public health and safety and responding to the environmental damage created by the release of petroleum.

346. At the time the Veeder Root/ATG, Shift Report was submitted to OSFM, on or about October 20, 2017, the ATG data and information concerning 113 RUL A NORTH water volume and water level were altered, concealed, false, deleted, and/or incomplete; information that OSFM and others would need to adequately investigate, and respond to, the release of petroleum from Gas Station #7445.

347. By submitting to the OSFM materially false, altered information, and concealing critical data from the Veeder Root/ATG report, concerning the gasoline and

water volume and level in 113 RUL A NORTH, 415 ILCS 5/44(a); 5/44(g)(3) and 5/44(g)(4.5) were violated.

Inadequate Training and Supervision

348. 41 Ill. Adm. Code Section 176.600, is titled:

OPERATOR TRAINING.

349. 41 Ill. Adm. Code Section 176.610, **Definitions,** provides the following definitions:

> **"Certified Operator"**, means a Class A, B, or C operator who has completed all the training required under this Subpart for his or her particular operator training classification.
>
> **"Class A Operator"** is someone that has primary responsibility to operate and maintain a UST in accordance with applicable regulatory requirements. The Class A operator(s) responsibility often include managing resources and personnel, such as establishing work assignments, to achieve and maintain compliance with regulatory requirements.
>
> **"Class B Operator"** is someone who has day-to-day responsibility for implementing applicable UST regulatory requirements and standards. The Class B operatory typically implements in-fields aspects of UST operation, maintenance and record keeping at one or more UST facilities.
>
> **"Class C Operator"** is an employee who is responsible for initially addressing alarms or other indications of emergencies caused by spills or releases from UST's. The Class C operator typically controls or monitors the dispensing or sale of regulated substances.
>
> **"Operator Training"**, means the training required under this Subpart.
>
> **"Training program"**, means any program that provides information to and evaluates the knowledge of a Class A, Class B, or Class C Operator who a combination of both training and testing approved in advanced by OSFM in meeting requirements of this Subpart F.

350. 41 Ill. Adm. Code Section 176.615, states in part:

Class A, B, and C Operator Classifications

The owner of each UST or group of USTs at a facility must have a Class A, Class B, and Class C Operator designated and shall ensure that each is trained in accordance with this Subpart.

351. 41 Ill. Adm. Code 176.620, states:

Training

(a) A Class A, Class B, or Class C Operator satisfies the training requirements of this Subpart by completing both training and an examination, as determined to be appropriate by OSFM.

352. 41 Ill. Adm. Code 176.625, states:

Minimum Training requirements

OSFM will approve a training mechanism for Class A, Class B and Class C Operators to be implemented by OSFM approved providers. Training and related examinations under this Subpart shall cover and test for appropriate knowledge of Illinois UST regulations. Generally, Class A, B. and C Operators will be trained in the following:

a) For Class A Operators, subject matter shall include, but not be limited to, financial responsibility documentation requirements, notification requirements, release and suspected release reporting, temporary and permanent closure requirements, operator training requirements, and a general knowledge of USTs requirements, including regulations relating to spill prevention, overfill prevention, release detection, corrosion protection, emergency response, product and equipment compatibility and demonstration, environmental and regulatory consequences of releases, and related reporting, recordkeeping, testing and inspections. Class A operators must have the knowledge and skills to make informed decisions regarding compliance and to determine whether the appropriated individuals are fulfilling the operation, maintenance and recordkeeping requirements for UST systems in accordance with the subsection.

b) For Class B Operators, subject matter shall include, but not be limited to, components of UST systems, materials of UST components, methods of release detection and release prevention applied to UST components, reporting and recordkeeping requirements, operator training requirements, and the operation and maintenance requirements of USTs that relate to spill prevention, overfill prevention, release detection and related reporting, corrosion protection, emergency response and product and equipment

compatibility and demonstration, environmental and regulatory consequences of releases, and related reporting, recordkeeping, testing and inspections. Training for the Class B operator must cover the general requirements that encompass all regulatory requirements and typical equipment used at UST facilities or site-specific requirements that address only the regulatory requirements and equipment specific to the facility.

c) For Class C Operators, subject matter shall include, but not be limited to:

1) recommended responses to:

A) emergencies (such as, situations posing an immediate danger or threat to the public or to the environment requiring immediate action);

B) spill alarms; and

C) releases from a UST;

2) the locations and proper operation of emergency stops;

3) the use of other emergency equipment; and

4) notifying the appropriate authorities in response to such emergencies, alarms and releases.

353. At all relevant times Gas Station #7445 did not have any competent Class A, B or C Operators employed at Gas Station #7445.

354. The fact co-defendant MANOJ V. signed the OSFM Red Tag Notification on August 3, 2016 and November 9, 2016, and allow petroleum to be delivered into 113 RUL A NORTH on November 14, 2016, and January 9, 2017, illustrate the inadequate training employed by MPC, SPEEDWAY and MANOJ V.

355. The employees at Gas Stations #7445 did not know of the minimal requirements of LUST and the rules and regulations promulgated by the OSFM concerning UST's through 41 Ill. Adm. Code 174, 175, 176, and 177.

356. Co-defendant MANOJ VALIATHARA was the manager of Gas Station #7445 on October 20, 2017. As such, co-defendant VALIATHARA was responsible for ensuring that all employees at the station held a Class C Operators certification and be familiar with LUST and basic rules, regulations, and procedures concerning UST's at Gas Station #7445.

357. At all relevant times the Class C operators, including co-defendant, MANOJ VALIATHARA, did not know who the designated Class A or Class B operators were for Gas Station #7445.

358. As shown above under the six 5/42(h) civil damages factors and 5/44 criminal violations, in 2017, Gas Station #7445 employees, including managers, did not follow and/or ignored the requirements of LUST and 41 Ill. Adm. Code 174, 175 and 176 and 430 ILCS 15.1 *et seq*. the Gasoline Storage Act.

359. On or about November 7, 2016, OSFM received defendant SPEEDWAY's notification that 113 RUL A NORTH was being temporarily taken out of service.

360. On November 14, 2016, SPEEDWAY allowed MPC to deliver over 8000 gallons of petroleum into 113 RUL A NORTH/OSFM #1 when the tank was out of service and had not been registered to accept fuel pursuant to OSFM regulations, 41 Ill. Adm. Code 176.810(a).

361. On January 9, 2017, SPEEDWAY again allowed co-defendant MPC to unlawfully pump an additional 1,000 gallons of petroleum into 113 RUL A NORTH/OSFM #1.

362. Exceeding 95% capacity in a 10,000 gallon UST was, and is, a dangerous, illegal, and unsafe use of a UST in violation of 430 ILCS 15/1, The Gasoline Storage Act.

363. Isolated from Gas Station #7445's dispensing system, no petroleum was pumped out of 113 RUL A NORTH and the Veeder Root/ATG continually reported a total volume of 9,816 gallons of liquid, initially petroleum, then water, in 113 RUL A NORTH from January 9, 2017, through October 20, 2017, 285 consecutive days.

364. The Veeder-Root/ATG on January 9, 2017, activated alarms placing 113 RUL A NORTH/OSFM #1 in both high product alarm and tank maximum product alarm status, which means that the fuel level in the UST had exceeded a safe working capacity.

365. A tank maximum product alarm requires a critical work order requiring the alarm to be resolved within eight (8) hours of receipt.

366. On January 10, 2017, a SPEEDWAY technician responded to the critical work order generated as a result of the high product and maximum product alarms activated on January 9, 2017. The technician verified that the USTs settings and its ATG floats were working properly. The technician noted that 113 RUL A NORTH/OSFM #1 had long been "problematic," and called contractor DRW Services to investigate further, and left the work order unresolved.

367. On January 12, 2017, contractor DRW Services responded to the technician's request but was not asked to address OSFM #1's high product and maximum product alarms.

368. Co-defendant VALIATHARA verified that the January 9, 2017, critical work order was completed when that was not true with respect to 113 RUL A NORTH/OSFM #1, which remained active in both high product and maximum product alarm status.

369. At all relevant times, pursuant to instructions from SPEEDWAY corporate headquarters, Veeder Root ATG System warnings and alarms were silenced, and then ignored, at Gas Station #7445.

370. MPC and Speedway's employees at Gas Station #7445 were incompetent in relation to following LUST.

371. At all relevant times defendant SPEEDWAY and MPC did not require Class C Operators of their USTs at Gas Station #7445 to follow the requirements of LUST and regulations thereunder.

372. From January 10, 2017, until after the fires and explosions of October 20, 2017, SPEEDWAY and MPC allowed employees at Gas Station #7445 to ignore both warnings and alarms being activated concerning hazards and dangers in the UST system, including UST 113 RUL A NORTH/OSFM #1.

373. Beginning in January, 2017, the tank high product alarm and tank maximum product alarms were routinely activated, and then silenced and ignored, until after the fires and explosions of October 20, 2017.

374. On October 5, 2017, 113 RUL A NORTH/OSFM #1 high water warning was activated and again, not cleared, until after the fires and explosions of October 21, 2017.

375. On October 9, 2017, 113 RUL A NORTH Tank high water alarm was again activated and, again, was not cleared until October 21, 2017, after the fires and explosions.

376. On October 10, 2017, it was noted by one of defendant's technicians that, "water was filling in (as fast) as it was being removed," from UST 113 RUL A NORTH.

377. October 11, 2017, was the last day SPEEDWAY, or any of its agents, contractors, and/or servants performed work on 113 RUL A NORTH, despite it filling up with water and releasing petroleum into the environment and presenting a clear danger to the public health and welfare, including plaintiff.

378. During October, 2017, co-defendant MPC made deliveries of petroleum to the UST system at Gas Station #7445.

379. MPC, when making deliveries of petroleum, had physical access to Gas Station #7445's Veeder Root/ATG System.

380. On October 11, 2017, the tank high product alarm again went off, and was again silenced, and not cleared, until after the fires and explosions of October 20, 2017.

381. On October 11, 2017, UST 113 RUL A NORTH's tank maximum product alarm was activated, and again, not cleared until after the fires and explosions of October 20, 2017.

382. On October 12, 2017, DRW sent an e-mail to Speedway headquarters, including photos taken on October 10th, with a description of 113 RUL A NORTH disrepair and the fact that the water table was above the USTs. DRW's photos showed a mixture of gasoline and water.

383. On October 15, 2017, 113 RUL A NORTH/OSFM #1 invalid fuel level alarm was activated and, again, not cleared until after the fires and explosions of October 20, 2017.

384. At no time between October 5, 2017, and October 20, 2017, before the fires and explosions, did any employee at store #7445 call IEMA, OSFM, IEPA, Westmont Fire Department, or any other local authority, to report a potential or suspected release of

petroleum, even after the entire tank had been filled with water no later than October 15, 2017.

385. Gas Station #7445 employees, including the manager, did not ever consider, or have competent knowledge of, how to respond to a petroleum release from a UST; how to respond to emergency situations involving suspected and/or confirmed releases of petroleum; and when to notify the appropriate authorities in response to such emergencies, warnings, and alarms, concerning petroleum releases from UST's.

386. In October, 2017, Gas Station #7445 did not voluntarily disclose, remedy and/or respond to potential or suspected releases of petroleum, but ignored warnings, silenced alarms, ignored dangers signaled by the warnings and alarms, and then concealed the data/information concerning leaking UST's when requested by OSFM authorities after the fires and explosions of October 20, 2017. These acts and omissions in the ownership and operation of the UST System at Gas Station #7445 show a disregard for the training requirements of LUST, the OSFM, and the general public's safety and welfare.

Public Policy

387. In addition to the mandates and public policies stated in Article XI of the Illinois Constitution and Title I of the Act, 415 ILCS 5/2, the purpose of Civil Penalties/Damages for those persons who violate the Act, including LUST, are stated in the Policies Statement of the Illinois EPA, which states: **Compliance and Enforcement**

> "The Illinois EPA's enforcement program seeks to obtain prompt compliance with the Illinois Environmental Protection Act and regulations promulgated thereunder, pose a deterrent to actions that delay or prevent prompt compliance, provide an incentive for timely and responsible compliance behavior,

and ensure that persons who comply with environmental requirements are not placed at a competitive disadvantage.

To successfully implement its programs, the Illinois EPA uses compliance assistance and education, compliance inspections and reviews, and finally enforcement. Each is needed, and each complements the others. We all recognize that most regulated entities comply voluntarily. Others may not comply, because of a lack of information, or through negligence, or actual intent to avoid the requirements and costs that may go with them. Deterrence can only be had if the enforcement option is always available, and is pursued timely and consistently. If not timely, deterrence will be diminished by the distance in time between the violation and the pain of the penalty. If not consistently applied, fairness is lacking and competitive disadvantages may result."

Survival of Action

388. By the terms of the Act, generally, and LUST specifically, applicable and controlling case law, and the clear and strong public policy, all remedies and damages of any kind granted to, or allowed to be sought by, plaintiff decedent, MARGARET L. RICE, under the Act and LUST, survived her death; that had she survived she would have been entitled to bring an action for all remedies, damages, injuries and loss under the terms of the Act and LUST, applicable, controlling case law, the public policy underlying the Act and LUST, and controlling case law.

WHERERFORE, Plaintiff, LAURA E. RICE, as Special Representative of the Estate of MARGARET L. RICE, deceased, prays that judgment be entered in her favor and against SPEEDWAY, LLC for its violations of the Act/LUST; plaintiff requests all damages and remedies allowed pursuant to the Act and LUST, in excess of the minimal jurisdictional amount of the Law Division, Cook County Circuit Court.

COUNT III
VIOLATION OF ILLINOIS ENVIRONMENTAL PROTECTION ACT;
BODILY INJURY RESULTING FROM RELEASE OF PETROLEUM FROM UNDERGROUND STORAGE TANK;
STRICT LIABILITY;
MANOJ VALIATHARA

NOW COMES Plaintiff, LAURA E. RICE, as Special Representative of the Estate of MARGARET L. RICE, deceased, ("plaintiff") by and through their attorneys, BUDIN LAW OFFICES, realleges and incorporates paragraphs 1 through 172 of Facts Common To All Counts, as though fully set forth herein as Paragraphs 1 – 172 of this Count III of plaintiff's Amended Complaint at Law, complaining of defendant MANOJ VALIATHARA.

173. This Count is brought pursuant to the Illinois Environmental Protection Act, 415 ILCS 5, generally, and specifically Title XVI, Petroleum Underground Storage Tanks, 415 ILCS 5/57.1 – 19.

174. Damages are authorized pursuant to Title XII of the Act, **"Penalties"** 415 ILCS 5/42, et seq.

175. The Illinois Environmental Protection Act was borne as a result of Article XI of the Illinois Constitution, which states; Article XI, ENVIRONMENT:

> 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.
> (Source: Illinois Constitution.)
>
> 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.
> (Source: Illinois Constitution.)

176. Title I of the Environmental Protection Act, 415 ILCS 5/2(a) states in relevant part:

> "The General Assembly finds:
>
> "(i) That environmental damage seriously endangers the public health and welfare, as more specifically described in later sections of this Act:
>
> (ii) that because environmental damage does not respect political boundaries, it is necessary to establish a unified state-wide program for environmental protection and to cooperate fully with other States and with the United States in protecting the environment;
>
> (iii) that air, water, and other resource pollution, public water supply, solid waste disposal, noise, and other environmental problems are closely interrelated and must be dealt with as a unified whole in order to safeguard the environment;
>
> (v) that in order to alleviate the burden on enforcement agencies, to assure that all interests are given a full hearing, and to increase public participation of protecting the environment, private as well as governmental remedies must be provided;
>
> (vi) that despite the existing laws and regulations concerning environmental damage there exist continuing destruction and damage to the environment and harm to the public health, safety and welfare of the people of this State, and that among the most significant sources of this destruction, damage, and harm are the improper and unsafe transportation, treatment, storage, disposal, and dumping of hazardous wastes;
>
> (vii) that it is necessary to supplement and strengthen existing criminal sanctions regarding environmental damage, by enacting specific penalties for injury to public health and welfare in the environment.
>
> (b) It is the purpose of this Act, as more specifically described in later sections, 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.
>
> (c) The terms and provisions of this Act shall be liberally construed so as to effectuate the purposes of the Act as set forth in subsection (b) of this Section, but to the extent that this Act prescribes criminal penalties, it shall be construed in accordance with the Criminal Code of 2012."

177. The Illinois Environmental Protection Act (hereafter "the Act"), is implemented and administered through 35 Illinois Administrative Code.

178. The Act, enacted June 29, 1970, is patterned after, and largely mirrors, the Federal United States Environmental Protection Act.

179. That Illinois Environmental laws, statutes, regulations, and/or rules cannot be less stringent than their corresponding Federal laws, statutes, regulations and/or rules.

180. Illinois Environmental laws may be more stringent than their Federal counterparts.

181. Illinois Environmental laws, statutes, regulations and/or rules cannot be construed to be less stringent or inconsistent with the provisions of their corresponding Federal Environmental laws, statutes, regulations and/or rules.

182. The Illinois Environmental Protection Agency (hereafter "IEPA"), created by the legislature, has a mandate to conduct a program of surveillance of actual and potential contamination sources of air, water, noise and solid waste pollution.

183. Pursuant to 415 ILCS 5/4, IEPA is the agency designated as the implementing agency for the majority of the Federal Environmental Statues and permitting programs thereunder. 415 ILCS 5/4(l)

184. Section 3.315 of the Act, 415 ILCS 5/3.315, provides the following definition:

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

185. On October 20, 2017, plaintiff MARGARET RICE, was a person as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315.

186. On October 20, 2017, defendant MANOJ VALIATHARA was a person as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315.

A. Violation of Title XVI. Petroleum Underground Storage Tanks (LUST)

187. Title XVI of the Act, enacted by the legislature on September 13, 1993, is known as the **Leaking Underground Storage Tank Program (LUST)**. 415 ILCS 5/57.1 – 19.

188. The Federal Underground Storage Tank (UST) (EPA) laws, statutes, rules, requirements and/or regulations are found at 42 U.S.C. Section 6912; 6991 (a)(b)(c)(d)(e)(f)(i)(k); and 40 CFR parts 280 and 281.

189. Illinois' underground storage tank (hereafter "UST" or LUST") laws, statutes, rules, requirements, and/or regulations cannot be less stringent than the Federal UST laws, statutes, rules, and/or regulations, but they may be more stringent.

190. Pursuant to The Gasoline Storage Act, 430 ILCS 15/2(1)(a) and 15/2(3)(a), the legislature has given the Office of the State Fire Marshal (hereinafter "OSFM") the authority to promulgate rules and regulations for storage of gasoline and volatile oils, and has authority over underground storage tanks that contain or are designed to contain petroleum.

191. Pursuant to LUST, 415 ILCS 5/57.3 and 57.4 the OSFM and the IEPA divide responsibility to administer the Illinois LUST program.

192. Chapter 41 of Illinois Administrative Code, Parts 174, 175, 176, and 177, and the Gasoline Storage Act, 430 ILCS 15/1, et seq, codifies, implements, and administers LUST and establishes the standards and requirements that owners and/or

operators of gas stations and underground storage tanks must meet in order to lawfully operate in the State of Illinois.

193. LUST, 415 ILCS 5/57.1 states,

Applicability

(a) An owner or operator of an underground storage tank who meets the definition of this Title shall be required to conduct tank removal, abandonment and repair, site investigation and corrective action in accordance with the requirements of the Leaking Underground Storage Tank Program.

194. LUST, 415 ILCS 5/57.2 provides the following definitions:

"**Bodily injury**" means bodily injury, sickness, or disease sustained by a person, including death at any time, resulting from a release of petroleum from an underground storage tank.

"**Release**" means any spilling, leaking emitting, discharging, escaping, leaching, or disposing of petroleum from an underground storage tank into ground water, surface water or subsurface soils.

"**Corrective action**" means activities associated with compliance with the provisions of Sections 57.6 and 56.7 of this Title.

"**Occurrence**" means an accident, including continuous or repeated exposure to conditions, that results in a sudden or non-sudden release from an underground storage tank.

When used in connection with, or when otherwise relating to, underground storage tanks, the terms "**facility**", "**owner**", "**operator**", "**underground storage tank ("UST")**", "**petroleum**" and "**regulated substance**" shall have the meaning ascribed to them in Subtitle I of The Hazardous and Solid Waste Amendments of 1984 of the Resource Conservation and Recovery Act of 1976 provided further...however, that the term "**owner**" shall also mean any person who has submitted to the Agency a written election to proceed under this Title and has acquired an ownership interest in a site on which one or more registered tanks have been removed, but on which corrective action has not yet resulted in the issuance of a "no further remediation letter" by the Agency pursuant to this Title.

"**Property damage**" means physical injury to, destruction of, or contamination of tangible property, including all resulting loss of use of that property; or loss of use of tangible property that is not physically injured, destroyed, or contaminated but has been evacuated, withdrawn from use, or rendered inaccessible because of a release of petroleum from an underground storage tank.

195. An **underground storage tank** is defined as, "any one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of regulated substances, and the volume of which,....is 10 (percent) or more beneath the surface of the ground." 42 USC section 6991(10).

196. Owners and/or operators of underground storage tanks (hereafter "UST") as defined above must comply with both Federal UST requirements as well as the Illinois LUST laws, statutes, regulations, requirements, procedures, and/or rules implementing and/or administering LUST.

197. On October 20, 2017, defendant MANOJ VALIATHARA was an operator, pursuant to LUST, of the UST's at Gas Station #7445.

198. During October, 2017, there was a release, pursuant to LUST, of petroleum from a UST at Gas Station #7445.

199. As a result of the release of petroleum from a UST located at Gas Station #7445, plaintiff, pursuant to LUST, on October 20, 2017, suffered bodily injury and burns from the explosion at her residence caused by the release.

Strict Liability

200. LUST, 415 ILCS 5/57.12(a)(1), states in part:

> **Underground storage tanks; enforcement; liability.**
>
> (a) Notwithstanding any other provision or rule of law, the owner or operator, or both, of an underground storage tank shall be liable for all costs of investigation, preventive action, corrective action and enforcement action incurred by the State of Illinois resulting from an underground storage tank. Nothing in this Section shall affect or modify in any way:
>
> (1) The obligations or liability of any person under any other provision of this Act or State or federal law, including common

law, for damages, injury or loss resulting from a release of substantial threat of a release as described above;

201. LUST, 415 ILCS 5/57.12(g), states:

(g) The standard of liability under this Section is the standard of liability under Section 22.2(f) of this Act.

201. 415 ILCS 5/22.2(f) of the Act, states:

(f) Notwithstanding any other provision 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 a release of a hazardous substance or pesticide:

203. Pursuant to 5/57.12(g), LUST, by adopting 22.2(f) of the Act as the standard of liability for violators of LUST, persons, including owners and/or operators of a UST, who violate LUST are strictly liable for all damages incurred by members of the public, including plaintiff, who incur damages, injury and/or loss as a result of a violation of LUST.

204. Pursuant to LUST, 415 ILCS 5/57.12(a), 5/57.12(g) and 5/22.2(f), of the Act, defendant MANOJ V., as an operator, individually, and as the manager, employee, and/or representative of SPEEDWAY is strictly liable for any and all damages, injury, or loss, sustained by Plaintiff, as a result of defendants' violation(s) of LUST at Gas Station #7445.

B. DAMAGES

205. Pursuant to Title XII. of the Act, "**Penalties**", 415 ILCS 5/42 – 5/45; persons who violate the Act, including LUST, are subject to:

(1) Civil Penalties, 415 ILCS 5/42;

(2) (Substantial danger to environment or public health; sewage works contaminants) which authorizes immediate, ex parte injunctions, 415 ILCS 5/43;

(3) Criminal Acts; penalties, 415 ILCS 5/44;

(4) (Forfeiture of gains attributable to violations), 415 ILCS 5/44.1; and/or

(5) Injunctive and other Relief, 415 ILCS 5/45.

206. Pursuant to 415 ILCS 5/42(h), in assessing plaintiff's damages under the Act for defendant's violations of LUST, the trier of fact, does, and, "is authorized to consider any matters of record in mitigation or aggravation of penalty, including, but not limited to, the following factors:

> (1) the duration and gravity of the violation;
>
> (2) the presence or absence of due diligence on the part of the defendant in attempting to comply with requirements of this Act and the regulations thereunder or to secure relief therefrom as provided by this Act;
>
> (3) any economic benefits accrued by defendant because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
>
> (4) the amount of monetary penalty which will serve to deter further violations by the defendant and to otherwise aid in enhancing voluntary compliance with this Act by the defendant and other persons similarly subject to the Act;
>
> (5) the number, proximity in time, and gravity of previously adjudicated violations of this Act by the defendant;
>
> (6) whether the defendant voluntarily self-disclosed, in accordance with subsection (i) of this Section, the noncompliance to the Agency;
>
> (7) whether the defendant has agreed to undertake a "supplemental environmental project", which means an environmentally beneficial project that a defendant agrees to undertake in settlement of an enforcement action brought under this Act, but which the defendant is not otherwise legally required to perform; and
>
> (8) whether a defendant has successfully completed a Compliance Commitment Agreement under subsection (a) of

Section 31 of this Act to remedy the violations that are the subject of the complaint. 415 ILCS 5/42(h)

415 ILCS 5/42(h) Factors

(1) The Duration and Gravity of the Violation

207. The OSFM determined that the release of petroleum from Gas Station #7445 was "catastrophic" in nature and scope and "unprecedented" in gravity. It was, "a ridiculous amount of gasoline that was released, over a ridiculously large affected area and over a relatively short time". **See, Plaintiff's Ex. #30, 3 pages (October 20, October 22, October 23, and October 28, 2017, E-mails of Fred Schneller and Scott Johnson of OSFM.)**

208. Numerous municipalities/villages in the surrounding area were adversely affected by the release.

209. The OSFM determined that the entire 9,816 gallons of petroleum stored in OSFM #1 113 RUL A NORTH on October 1, 2017, had likely been released into the environment.

210. Patrick Brenn, Deputy Fire Chief of the Tri-State Fire Department District, who also investigated the release and the cause of the explosion at plaintiff's residence, determined that there were at least 8,900 gallons of petroleum unaccounted for released from UST 113 RUL A NORTH/OSFM #1.

211. The OSFM, IEPA, and Tri-State Fire Department District all concluded that the explosion that caused plaintiff's injuries and burns was caused by the release of petroleum from Gas Station #7445.

212. The petroleum from 113 RUL A NORTH/OSFM #1 traveled/migrated at least seven miles from its release point at Gas Station #7445.

213. The release caused alarms to sound at the community Flagg Creek Water treatment facility, 5 miles from Gas Station #7445.

214. Seven fire departments responded to the release, with over 250 first responders being called to duty.

215. DuPage County Homeland Security emergency alarms and personnel were activated and deployed as a result of the release.

216. The Red Cross responded with personnel and aid for those members of he public adversely affected by the release.

217. Based on information, belief, research, and discovery to date, the petroleum release from Gas Station #7445, Westmont, Illinois, in October, 2017, was not only the largest in Illinois environmental history, but the second largest release of petroleum from a single 10,000 gallon UST in the entire nation's history. **See, Plaintiff's Ex. #31 (Photograph of 10,000 gallon UST being removed from Gas Station #7445.)**

218. The release was extensively covered by broadcast, print, and internet national media as well as local Chicagoland media for an extended period of time. The occurrence was the lead story on the local ABC, CBS, NBC and FOX 10:00 p.m. news the entire weekend of October 20, 2017, with follow ups for some time thereafter. **See, Plaintiff's Ex. #32 (Media reports, 26 pages.)**

219. James R. Wilkins of MPC sent news of the release and its scope to top executives and/or officers of MPC on October 20, 2017, at 10:03 P.M. and again on October 21, 2017, at 3:46 A.M. **See, Plaintiff's Ex. #33, 4 pages (James Wilkins October 20, 2017 and October 21, 2017, E-Mail chain.)**

220. Due to the scope of the environmental emergency defendant SPEEDWAY assisted in mobilizing numerous contractors, subcontractors, and consultants, consisting of hundreds of people, in response to the release. **See, Plaintiff's Ex. #33, Plaintiff's Ex. #34 (7 pages, MPC E-Mail chain of October 20, 2017.)**

221. Defendant MPC, as well as their agents, including co-defendant SPEEDWAY, kept environmental remediation personnel employed to Gas Station #7445 through at least February, 2018, in order to complete the environmental clean-up from the petroleum release.

222. On or about October 24, 2017, the OSFM issued a Notice of Violation and the entire UST system at Gas Station #7445 was formally placed out of service by the OSFM.

223. On or about October 27, 2017, OSFM issued a permit authorizing the removal of the entire UST system at Gas Station #7445.

224. On or about November 3, 2017, due to defendants continuing to present a substantial danger to the environment and/or the public health, the Office of the Illinois Attorney General, at the request of the Illinois EPA, filed its Verified Complaint and request for immediate injunctions against defendant SPEEDWAY. **See, Plaintiff's Ex. #35, 22 pages (State of Illinois Verified Complaint, p. 6, 7.)**

225. The verified factual matters alleged in Exhibit 35 are all true and accurate, supported by affidavits and hereby made part of this Amended Complaint.

226. On November 13, 2017, the DuPage Circuit Court filed its Agreed Immediate and Preliminary Injunction Order. **See, Plaintiff's Ex. #36, 7 pages (November 13, 2017, Agreed Immediate and Preliminary Injunction Order.)**

227. The Agreed Injunction Order reads, in part,:

> "NOW THEREFORE, Plaintiff having alleged that a substantial danger to the environment or to the health and welfare of persons exists, pursuant to Illinois Environmental Protection Act, 415 ILCS 5/1 et. seq. (2016), ("Act") and the parties having agreed to the entry of this Agreed Immediate and Preliminary Injunction Order (the "Order"), the Court enters the following immediate and preliminary injunction pursuant to Section 43(a) of the Act, Illinois Environmental Protection Act 415 ILCS 5/43(a) (2016)"

See, Plaintiff's Ex. #36, pg. 1.

228. The November 13, 2017 Agreed Injunction Order ordered that SPEEDWAY LLC, among other things, submit reports and other information required by the Illinois Pollution Control Board UST Regulations, 35 Ill. Adm. Code Part 734, or as requested by the Illinois EPA. **See, Plaintiff's Ex. #36 (Immediate Injunction Order.)**

229. On December 13, 2017, SPEEDWAY filed its report detailing the cause of the gasoline release at Gas Station #7445. **See, Plaintiff's Ex. #24 (December 13, 207, Speedway Gasoline Release Investigation Report, 7 pages.)**

230. The Gasoline Release Investigation states:

> "In summary, these findings and observations suggest that gasoline that was displaced and released from Tank No. 3, migrated through the bedding material to the northern portion of the site, and then migrated east through bedding around the storm water and sanitary lines. Finally, the gasoline migrated to the bedding around Flagg Creek WRD's north-south sanitary line on the eastern portion (easement) of the Speedway property. Gasoline likely entered into Flagg Creek WRD's north-south sanitary sewer via numerous breaches, an offset joint in the clay tile pipe north of Manhole 1597 and at manhole 1596 to the south."

See, Plaintiff's Ex. #24, p. 7.

(A) Violations from November 14, 2016, though October 20, 2017

231. 41 Illinois Administrative Code 175.810(a), states:

Temporary Closure

(a) USTs may be put into a temporary closure status provided they meet the performance standards for new UST systems or the upgrading requirements specified in 41 Ill. Adm. Code 174 through 176 and 40 CFR 280, except that spill and overfill prevention equipment requirements do not have to be met. The USTs may continue in a temporary closure status for a period of 5 years from the date of last use provided they meet the following requirements:

(1) The tank and product lines shall be emptied immediately upon placing the UST in a temporary closure status. The UST is empty when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters (one inch) of residue, or 0.3% by weight of the total capacity of the UST system, remain in the system.

(3) OSFM must receive a written request, within 30 days after the date the tank was last used, requesting temporary closure status. The request shall be submitted on a Notification for Underground Storage Tanks on OSFM forms (available at http://www2.illinois.gov/sites/sfm/About/Divisions/Petroleum-Chemical-Safety/Pages/Applications-and-Forms.aspx).

(6) Subject to all other applicable OSFM requirements, a UST may be put back in operation any time during the first twelve months, without meeting the requirements of subsection (d), subject to the requirement that OSFM be notified in writing on the notification for underground storage tanks form at least ten days prior to operation.

(d)(6) Prior to a tank being put back in service, all requirements for return to service must be met, and all testing and inspections passed, and a Notification for Underground Storage Tanks Forms placing the tanks "Currently in Use" must be submitted.

Violation of Gasoline Storage Act, 430 15/1 et seq.

232. The **Gasoline Storage Act**, 430 ILCS 15/1, states:

Section 1. It shall be unlawful for any person, firm, association or corporation to keep, store, transport, sell or use any crude petroleum, benzine, benzol,

gasoline, naphtha, either or other like volatile combustibles, or other compounds, in such manner or under such circumstances as will jeopardize life or property.

233. A "Red Tag" issued by OSFM on August 3, 2016, put 113 RUL A NORTH out of service due to, "takin on water." **See, Plaintiff's Ex. #37, 2 pages.**

234. The Red Tag issued August 3, 2016, and signed by co-defendant MANOJ VALIATHARA, specifically prohibited any further deliveries of gasoline into 113 RUL A NORTH/OSFM Tank 1.

235. The Red Tag issued August 3, 2016, states, "DO NOT REMOVE THE RED TAG!"; Only a representative of the OSFM can remove the Red Tag. **See, Plaintiff's Ex. #37 (August 3, 2016, Red Tag, p. 2.)**

236. The Red Tag issued by OSFM to defendant SPEEDWAY on August 3, 2016, was not removed by OSFM at any time prior to the fires and explosions of October 20, 2017, due to the release.

237. On August 3, 2016, a Notice of Violation was also issued to Gas Station #7445 and signed by MANOJ V. **See, Plaintiff's Ex. #38, 5 pages (August 3, 2016, Notice of Violation.)**

238. Despite the OSFM never removing the Red Tag issued August 3, 2016, defendant MPC transported, supplied and filled 113 RUL A NORTH with gasoline on November 14, 2016, and to full maximum capacity on January 9, 2017. **See, Plaintiff's Ex. #21, p. 5.**

239. Defendant MANOJ V. began violating the requirements of the Red Tag issued on August 3, 2016, on November 14, 2016, when MPC made the delivery of gasoline to 113 RUL A NORTH.

240. MANOJ V. once again violated the Red Tag when he allowed MPC to deliver/pump another 1,000 gallons of gasoline into 113 RUL A NORTH on or about January 9, 2017.

241. Between August 3, 2016, and through October 20, 2017, 113 RUL A NORTH was not authorized/permitted by the OSFM to be in service or operation, including storing petroleum for any reason.

242. On or about November 7, 2016, the Office of the State Fire Marshall, Division of Petroleum Chemical Safety, received Speedway #7445's Notification For Underground Storage Tank form which identified 113 RUL A NORTH's ("OSFM Tank 1) status as, "Temporarily out of use." **See Plaintiff's Ex. #40, 5 pages (November 7, 2016, Notice for Underground Storage Tank.)**

243. In 2016 and 2017, 41 Ill. Adm. Code 175.810(a)(1) required that an underground storage tank be emptied immediately upon placing the underground storage tank in a temporary closure status.

244. In 2016 and 2017, 41 Ill. Adm. Code 175.810(a)(6) required that the OSFM be notified in writing on the Notification for Underground Storage Tanks form at least 10 days prior to placing a temporarily closed underground storage tank back in operation.

245. Between November 7, 2016, and November 14, 2016, MANOJ VALIATHARA (hereafter "MANOJ V.") did not notify the OSFM in writing on the Notification for Underground Storage Tanks form pursuant to 41 Ill. Adm. Code 175.810(a)(6) that 113 RUL A NORTH (OSFM #1) was being placed in operation.

246. On or about November 14, 2016, MANOJ V. allowed MPC to unlawfully transport, supply and/or pump over 8,300 gallons of regular unleaded petroleum into 113

RUL A NORTH (OSFM Tank #1) without fulfilling the requirements of 41 Ill. Adm. Code 175.810(a)(6). **See, Plaintiff's Ex. #21 (Veeder Root Automatic Tank Gauge Monitoring/Inventory Report, 14 pages); Plaintiff's Ex. #41 (October 21, 2017, E-Mail from Randy Carben of OSFM to Scott Johnson.)**

247. Between November 7, 2016, and January 9, 2017, MANOJ V., did not notify the OSFM in writing on the Notification for Underground Storage Tanks form pursuant to 41 Ill. Adm. Code 175.810(a)(6) that 113 RUL A NORTH ("OSFM Tank #1) was being placed in operation.

248. At no time from January 9, 2017, until after the fires and explosions of October 20, 2017, did MANOJ V. notify the OSFM 113 RUL A NORTH/OSFM #1 was being placed back in operation.

249. On January 9, 2017, MANOJ V. allowed MPC to again unlawfully deliver, supply and/or pump over 1,000 additional gallons of gasoline into 113 RUL A NORTH ("OSFM Tank #1) without fulfilling the requirements of 41 Ill. Adm. Code 175.810(a)(6). **See, Plaintiff's Ex. #21; (Inventory report, p. 3, 4)**

250. There were no additional deliveries of petroleum, nor any dispensing/withdrawals of petroleum at any time from 113 RUL A NORTH/OSFM #1 after January 9, 2017. **See, Plaintiff's Ex. #22 (Apparent Causal Event); and Plaintiff's Ex. #23 (Speedway Store #7445 Chronology: 10/01/17 – 10/20/17.)**

251. After defendant MPC January 9, 2017, unlawful delivery of the additional 1,000 gallons of regular unleaded gasoline by into 113 RUL A NORTH/OSFM #1 the Veeder-Root activated alarms placing 113 RUL A NORTH/OSFM #1, on (1) High Product alarm and (2) Tank Maximum Product alarm.

252. Between November 14, 2106, and October 15, 2017, MANOJ V. allowed unlawfully stored gasoline in 113 RUL A NORTH ("OSFM #1) in violation of 41 Ill. Adm. Code 175.810 and the Gasoline Storage Act, 430 ILCS 15/1. **See, Plaintiff's Ex. #21 (Inventory Reports, November 14, 2016, January 9, 2017.)**

253. By unlawfully placing 113 RUL A NORTH/OSFM #1 back in service on or about November 14, 2016, without a permit, registration and/or license, defendant MANOJ V. violated 41 Ill. Adm. Code 175.810(a)(6) and 430 ILCS 15.1 until October 20, 2017, for a duration of 340 days.

254. From at least October 10, 2017, until the fires and explosions on October 20, 2017, the defect at the top of 113 RUL A NORTH, allowed water to pour into 113 RUL A NORTH, through the defect.

255. 113 RUL A NORTH was full to its maximum capacity of 9,816 gallons of gasoline, before water began entering the UST in October, 2017.

256. Water will immediately displace the less dense gasoline by pushing the gasoline out of a UST, such as in 113 RUL A NORTH, during October, 2017.

257. Defendant MANOJ V. ignored active hazard alarms and did not repair the known defect or prevent the massive, protracted release of gasoline out of 113 RUL A NORTH into the environment causing harm to human health and safety, including plaintiff's, and to the environment, in violation of 430 ILCS 15.1 and 41 Ill, Adm. Code 175.810.

258. Under the Act, a violation of 430 ILCS 15.1 and 41 Ill. Adm. Code 175.810 is a Class A misdemeanor. Each day is a new violation/misdemeanor.

259. 41 Ill. Adm. Code 175.700, states:

Repairs Allowed

> Owners and operators of UST's shall ensure that repairs will prevent releases due to structural failure or corrosion as long as the UST is used to store regulated substances. Any hole or penetration made into a tank, including, but not limited to, any bung openings or any entrance way established for interior lining inspection, shall be installed and closed as per this Section.

260. Defendant MANOJ V. did not request repairs for the defect or prevent the massive, protracted release of gasoline out of 113 RUL A NORTH into the environment causing harm to human health and safety, including plaintiff's, and to the environment, in violation of 41 Ill. Adm. Code 175.700.

261. Under the Act, a violation of 41 Ill. Adm. Code 175.700 is a Class A misdemeanor. Each day is a new violation/misdemeanor.

262. 41 Ill. Adm. Code 175.710, states:

Emergency Repairs

> An emergency consists of a defect in a UST that is causing or threatens to cause harm to human health or the environment, or presents a threat to fire safety, and contact of the regulated substance with the defect cannot be prevented. In the event of a release, release reporting, investigation and initial response shall be conducted pursuant to 41 Ill. Adm. Code 174, 175 and 176. All emergency repairs shall meet the requirements of section 175.700 and require a permit applied for after-the-fact on the next business day and require a final inspection scheduled pursuant to section 175.320 within 10 days after issuance of the permit.

263. Under the Act, a violation of 41 Ill. Adm. Code 175.710 is a Class A misdemeanor. Each day is a new violation/misdemeanor.

264. From October 1, 2017, through October 20, 2017, MANOJ V. did not request any type of permit from OSFM or IEPA regarding repairs or emergency repairs on the USTs located at Gas Station #7445, in violation of 41 Ill. Adm. Code 175.710.

265. 41 Ill. Adm. Code Section 176.300, states:

Reporting of Suspected Releases

a) Owners or operators of USTs shall immediately report to IEMA (from Illinois, 1-800-782-7860; from outside Illinois, 217-782-7860) and follow the procedures in Sections 176.310, 176.320 (b) and (c) and 176.350 in any of the following situations:

(1) The discovery by owners, operators, product delivery drivers or others of released regulated substances at the UST site or in the surrounding area (such as the presence of free product or vapors in soils, basements, sewer or utility lines or nearby surface water);

2) Unusual operating conditions observed by owners or operators (such as the erratic behavior of product dispensing equipment, the sudden loss of product from a UST or an unexplained presence of water in the tank, or liquid in the interstitial space of any secondarily contained systems),

3) Monitoring results, including investigation of an alarm, from a release detection method required under 41 Ill. Adm. Code 175.620, 175.630 or 175.640 that indicate a release may have occurred.

266. Under the Act, a violation of 41 Ill. Adm. Code 176.300 is a Class A misdemeanor. Each day is a new violation/misdemeanor.

267. The water level in 113 RUL A NORTH on September 27, 2017, at 3:45 A.M. was "0".

268. On September 27, 2017, 113 RUL A NORTH contained, and was filled to its maximum capacity, with 9,816 gallons of regular unleaded petroleum and "0" gallons of water.

269. "0" is considered a normal water level reading for a UST storing and/or dispensing petroleum.

270. Between October 1, 2017, and October 5, 2017, the water level rose to 1.4551 inches in 113 RUL A NORTH.

271. By October 9, 2017, the water level in 113 RUL A NORTH had risen to 10.7233 inches of water.

272. The next day, October 10, 2017, at 7:45 P.M. the water level in 113 RUL A NORTH had risen to 13.2338 inches.

273. On October 11, 2017, at 7:45 P.M., the water level in 113 RUL A NORTH had more than doubled to 28.4316 inches.

274. By October 14, 2017, at 7:45 P.M. the water level in 113 RUL A NORTH had risen to 48.5987 inches.

275. On October 15, 2017, at 7:45 P.M. 113 RUL A NORTH was completely full of water, showing a water level of 93.3059 inches.

276. During October, 2017, the data on water levels, and/or various warnings and alarms from the Veeder Root/ATG System communicated a release may have occurred between October 5, 2017, through October 15, 2017, at Gas Station #7445.

277. On or about October 9, 2017, 113 RUL A NORTH/OSFM #1 Veeder Root activated the tank high water alarm. The tank high water alarm was not cleared until after the fires and explosions of October 20, 2017.

278. On October 14, 2017, when 113 RUL A NORTH was half full of water, having released thousands of gallons of petroleum into the environment, defendant MANOJ V. still had not reported a potential or suspected release of petroleum to either IEMA, OSFM, IEPA, and/or the Westmont Fire Department, in violation of 41 Ill. Adm. Code 176(a)(1)(2) and (3).

279. During October, 2017, defendant MPC continued to supply, transport and/or deliver gasoline to the UST System at Gas Station #7445.

280. MANOJ V. and Gas Station #7445 personnel had physical access to the ATG data on the Veeder Root located at Gas Station #7445 during October, 2017.

281. Between October 15, 2017, and before the fires and explosions of October 20, 2017, MANOJ V. did not notify the Illinois Office of State Fire Marshall, the Illinois Environmental Protection Agency, the 911 call center and/or the Village of Westmont Fire Department of the unusual UST activity and/or possible displacement, or potential, or suspected release of gasoline out of Gas Station #7445's USTs and UST System into the environment in violation of 41 Ill. Adm. Code 175.300.

282. At no time between October 4, 2017, and October 20, 2017, before the explosions and fires, did defendant MANOJ V. report to IEMA, OSFM, IEPA and/or the Westmont Fire Department that there may have been a release of petroleum from one of the USTs at Gas Station #7445 or that there was a substantial threat of a potential release of petroleum from 113 RUL A NORTH/OSFM #1, in violation of 41 Ill. Adm. Code 175.300.

283. 41 Ill. Adm. Code Section 176.320, states:

Initial Response and Reporting of Confirmed Releases

Initial Response. Upon confirmation of a release of a regulated substance, owners or operators shall perform the following initial response actions:

(a) Immediately report the release.

1) The release shall be reported by calling the 911 Call Center and then IEMA in the following situations:

A) spills and overfills of petroleum products over twenty-five gallons and spills and overfills of hazardous substances over a reportable quantity as defined in 41 Ill. Adm. Code 174.100.

B) Spills, overfills or confirmed releases that present a hazard to life, for example, when observations demonstrate the presence of petroleum or hazardous substance vapors in sewers or basements or free

product near utility lines, or where a sheen is present on a body of water.

284. Under the Act, a violation of 41 Ill. Adm. Code 176.320 is a Class A misdemeanor. Each day is a new violation/misdemeanor.

285. On October 9, 2017, contractor Ziron Environmental Services was dispatched to Gas Station #7445 to remove water from 113 RUL A NORTH.

286. Ziron Environmental was directed to remove only water from 113 RUL A NORTH.

287. Ziron spent hours at Gas Station #7445 on October 9, 2017, and could not remove/vacuum all the water out of 113 RUL A NORTH, stating, "RUL NORTH tank bottom will not lower below 7 inches of water." **See, Plaintiff's Ex. #42, 4 pages (October 9, 2017, Ziron work order.)**

288. Ziron Environmental Services informed the SPEEDWAY manager of Gas Station #7445 of their findings on October 9, 2017.

289. At all relevant times during October, 2017, Ziron Environmental Services, and other contractors, were directed to remove only water, not petroleum, from 113 RUL A NORTH/OSFM #1, until after the fires and explosions of October 20, 2017.

290. MANOJ V. had authority to request the removal of gasoline from 113 RUL A NORTH, at all relevant times.

291. On October 10, 2017, Ziron returned to Gas Station #7445 and was directed to pump out water from 113 RUL A NORTH. Ziron pumped out approximately 1,145 gallons of water from 113 RUL A NORTH. **See, Plaintiff's Ex. #16.**

292. On October 11, 2017, UST contractors M & M Mid Valley Service and Supply and DRW Services both reported to SPEEDWAY that the water level in 113 RUL

A NORTH had risen 8 inches in, "a little over one hour". They could both see and hear the water, "pouring into," 113 RUL A NORTH. **See, Plaintiff's Ex. #43, 5 pages (M & M Mid Valley Records dated September 24, 2019.)**

293. The thousands of gallons of petroleum released from 113 RUL A NORTH, created a substantial danger and hazard to the public health and safety, including plaintiff, the environment, as well as creating fire and explosion hazards.

294. At no time did MANOJ V., or any of SPEEDWAY managers, employees, and/or servants, call the 911 Call Center and/or IEMA (Illinois Emergency Management Agency), to report a confirmed release of petroleum from Gas Station #7445's UST system, even after nearly ten thousand gallons of petroleum had been released from 113 RUL A NORTH/OSFM #1 between October 5, 2017, through October 15, 2017, in violation of 41 Ill. Adm. Code 176.320(a).

295. At no time did MANOJ V. notify OSFM, IEPA, Westmont Fire Department, or any other government agency to report a confirmed release of petroleum from 113 RUL A NORTH, even after the entire 113 RUL A NORTH/OSFM #1 was completely full of water, in violation of 41 Ill. Adm. Code 176.320(a)(1)(A).

296. 41 Ill. Adm. Code Section 176.410, states:

> **General Requirement to Maintain all Equipment**
>
> All equipment and other items shall be maintained in accordance with 41 Ill. Adm. Code 174 through 176 and manufacturer's instructions and otherwise shall be kept in good operating condition at all times.

297. Under the Act, a violation of 41 Ill. Adm. Code 176.410 is a Class A misdemeanor. Each day is a new violation/misdemeanor.

298. By allowing holes, continuing corrosion, and other means of penetration to occur on the top of 113 RUL A NORTH, and, water entering the UST, defendant MANOJ V. did not keep 113 RUL A NORTH in good operating condition during October, 2017.

Second 42(h) Factor

The presence or absence of due diligence on the part of a defendant in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act.

299. Under the first **42(h) factor** discussion above, duration and gravity of violation, the numerous LUST violations highlight the complete absence of any due diligence on the part of defendant MANOJ V. and the employees of Gas Station #7445.

300. At all relevant times, rather than attempting to comply with the requirements of the Act and LUST, MANOJ V. ignored them, creating a substantial hazardous condition that threatened the health and safety of the general public, plaintiff and the environment.

301. The morning of January 9, 2017, SPEEDWAY added an additional 1,000 gallons of gasoline to the corroded and compromised 113 RUL A NORTH, increasing the total amount of gasoline in the UST to its maximum capacity of 9,816 gallons, which is 982 gallons above safe operating limits.

302. The morning of January 9, 2017, shortly after SPEEDWAY filled the compromised 113 RUL A NORTH to its maximum capacity of 9,816 gallons of gasoline, the UST's Automatic Tank Gauge activated a critical-priority Tank Maximum Product Alarm, which simultaneously communicated the critical-priority alarm to SPEEDWAY through the Veeder-Root's real-time electronic reporting.

303. A Critical priority designation is assigned to any active situation that "drastically affects sales or safety. Anyone's safety" and must be resolved within eight hours notification.

304. SPEEDWAY Corporate Store Support generates work orders in response to a store's active critical priority alarm and communicates the critical priority work order to the store's designated Speedway technician and SPEEDWAY's Corporate Reginal Maintenance Manager responsible for ensuring the unsafe condition is resolved.

305. Every day, for 285 consecutive days, beginning on January 9, 2017, through October 20, 2017, the Veeder-Root alerted MANOJ V. that the compromised 113 RUL A NORTH contained 9,816 gallons of gasoline, 982 gallons above the UST's safe operating limit causing the UST to be in active, unsafe, critical-priority Tank Maximum Product Alarm status.

306. The OSFM, on August 30, 2017 and October 5, 2017, still had 113 RUL A NORTH/OSFM #1, out-of-service since November 7, 2016. **See, Plaintiff's Ex. #52 (Mary Torricelli of OSFM E-Mails of August 30, 2017, August 31, 2017, and October 5, 2017, 10 pages.)**

307. As a result of their continued lack of due diligence subsequent to the fires and explosions of October 20, 2017, the Illinois Attorney General, on November 3, 2017, filed a lawsuit for various other violations of the Act done by and through defendant MANOJ V., as a result of the release. **See, Plaintiff's Ex. #35 (State of Illinois Verified Complaint.)**

Third 42(h) Factor

Any economic benefits accrued by the defendant because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;

308. The full economic benefits accrued by defendant MANOJ V. because of the delay, and noncompliance, with LUST, have not yet been determined.

Fourth 42(h) Factor

The amount of monetary penalty which will serve to deter further violations by the defendant and to otherwise aid in enhancing voluntary compliance with this Act by the defendant and other persons similarly subject to the Act.

309. More information and discovery is required before determining first, what amount of money will serve to deter defendant MANOJ V. and SPEEDWAY and its employees, from further violations of LUST and second, what amount of money will aid in enhancing voluntary compliance with the Act by MANOJ V. and SPEEDWAY and its employees, and deter other persons similarly subject to the Act and LUST.

Fifth 42(h) Factor

The number, proximity in time, and gravity of previously adjudicated violations of this Act by the defendant;

310. Beginning in July, 2016, if not before, defendant had similar, if not identical, defects in the same UST, 113 RUL A NORTH, which was releasing petroleum into the

environment due to holes from corrosion on the top of the tank. **See, Plaintiff's Ex. #45, 13, pages (Speedway July – August, 2016, E-mail chain, and 2 photographs.)**

311. On August 3, 2016, defendant, MANOJ VALIATHARA signed an Office of Illinois State Fire Marshal Notice of Violation for the failure of two of Gas Station #7445's underground storage tanks, one of which was 113 RUL A NORTH/OSFM#1. **See, Plaintiff's Ex. #37 and Plaintiff's Ex. #38 (August 3, 2016, Red Tag and Notice of Violation.)**

312. On August 3, 2016, 113 RUL A NORTH was issued a Red Tag and taken out of service by the OSFM due to it releasing petroleum, just as it did in October, 2017. Defendant, MANOJ V. acknowledged the Red Tag. **See, Plaintiff's Ex. #37 and Plaintiff Ex. #38**

313. On August 23, 2016, US Tank, one of defendant's contractors, informed SPEEDWAY of water entering 113 RUL A NORTH. **See, Plaintiff's Ex. #46, 9 pages (August 23, 2016, US Tank Report to co-defendant SPEEDWAY; E-Mails of October 5, 2016; October 21, 2016.)**

314. On September 1, 2016, Gas Station #7445, 113 RUL A NORTH, received another "Red Flag Notification" from OSFM, "Due to a continued state of non-compliance that has exceeded the 60 days allowed under the Notice of Violation (NOV)." **See, Ex. #47, 6 pages (September 1, 2016, Red Tag from OSFM.)**

315. Once the Red Flag Notification is attached to the UST, the tank's remaining fuel, "may be dispensed, however no fuel may be deposited into that UST." Violation can result in a $10,000.00 per day fine. **See, Plaintiff's Ex. #47.**

316. The September 1, 2016, Red Flag Notification was acknowledged and signed by Gas Station #7445 Manager, Mohammed Rauf. **See, Plaintiff's Ex. #47, p. 4.**

317. On October 14, 2016, OSFM determined defendant SPEEDWAY was not complying with the Notice of Violation and ordered UST 113 RUL A NORTH to be emptied immediately, **See, Plaintiff's Ex. #48 (Notice of Violation – Progress Report dated October 14, 2016.)**

318. On October 14, 2016, defendant SPEEDWAY received another Notice of Violation for non-compliance, and ordered two UST's, including 113 RUL A NORTH, to be emptied immediately. **See, Plaintiff's Ex. #48 (Notice of Violation – Progress Report dated October 14, 2016.)**

319. On November 1, 2016, defendant Speedway had still failed to comply with the August 3, 2016, Notice of Violation with "Tank 3", a/k/a 113 RUL A NORTH, having "visual corrosion holes" on top of the tank. **See, Plaintiff's Ex. #48 (Progress Report dated October 14, 2016, 3 pages.)**

320. During 2016, 113 RUL A NORTH, no effective corrective actions were taken on the compromised 113 RUL A NORTH. **See, Plaintiff's Ex. #45 (July 28, 2016 through August 24, 2016, Speedway E-Mail chain, with 2 photographs of corrosion on the top of 113 RUL A NORTH; August 25, 2016, letter from Speedway to IEPA.)**

321. On November 9, 2016, defendant, MANOJ VALIATHARA again signed an Office of Illinois State Fire Marshal Notice of Violation Progress Report regarding the failure of two of Gas Station #7445's underground storage tanks, one of which was 113

RUL A NORTH/OSFM #1. **See, Plaintiff's Ex. #49, 4 pages (UST November 9, 2016, Notices of Violations.)**

322. On November 14, 2016, and again on November 9, 2016, MANOJ V. allowed MPC to transport, supply and/or deliver petroleum to 113 RUL A NORTH until it was at maximum capacity of 9,816 gallons.

323 The same structural defects found in August, 2016, continued to compromise and cause additional defects in 113 RUL A NORTH through October, 2017.

324. Defendant MANOJ V. never requested any effective corrective action be taken between August 3, 2016, to October 20, 2017, to adequately repair or replace UST 113 RUL A NORTH, and in order to prevent potential releases of petroleum.

325. The violations found by OSFM in July – October 2016, persisted until after the fires and explosions of October 20, 2017.

Sixth 42(h) Factor

Whether the defendant voluntarily self-disclosed, in accordance with subsection (i.) of this Section, the noncompliance to the Agency;

326. One of the overriding requirements, and strong public policy, of the Act, is for persons to voluntary self-disclose possible or potential environmental issues/problems due to potential releases of petroleum from UST's.

327. Voluntary disclosure provides a method to aid in the enforcement of the Act.

328. The Act's public policy of voluntary disclosure is to prevent harm and damage to the health and well-being of the public and to the environment.

329. Rather than voluntarily self-disclose their noncompliance with LUST, and the Gasoline Storage Act, MANOJ V., elected to immediately attempt to deceive, disrupt, and distract OSFM in their investigation of the release by providing materially false and/or concealing critical data concerning the contents of 113 RUL A NORTH.

330. On or about October 20, 2017, a member of the OSFM requested the Veeder Root/ATG "Shift Report," for October 19th and 20th, which contained the recorded information/data regarding the UST System at Gas Station #7445.

331. The Shift Report contains the UST Tank Status information, the data concerning the UST's contents, liquid levels, volumes, ullage, height, water volume, water level and temperature at Gas Station #7445 on October 19, and 20, 2017. **See, Plaintiff Ex. #50 (2 pages, October 23, and November 2, 2017, E-Mail chain of Aaron Siegler, Scott Johnson, Fred Schneller of OSFM.)**

Other Aggravating Factors-Violations of 415 ILCS 5/44

332. 415 ILCS 5/44(a), states:

Criminal Acts; Penalties

a) Except as otherwise provided in this Section, it shall be a Class A misdemeanor to violate this Act or regulations thereunder, or any permit or term or condition thereof, or knowingly to submit any false information under this Act or regulations adopted thereunder, or under any permit or term or condition thereof.

333. 415 ILCS 5/44(h)(3) states:

Violations; False Statements

"Any person who knowingly destroys, alters, or conceals any record required to be made by this Act in connection with the disposal, treatment, storage, or transportation of hazardous waste commits a Class 4 Felony. A second or any subsequent offense after a conviction hereunder is a Class 3 Felony".

334. 415 ILCS 5/44(h)(4.5) states:

> "Any person who knowingly makes a false material statement or representation in any label, manifest, record, report, permit or license, or other document filed, maintained, or used for the purpose of compliance with Title XVI of this Act commits a Class 4 Felony. Any second or subsequent offense which concealed critical data, after conviction hereunder is a Class 3 Felony".

335. At the time OSFM received the "Shift (Tank Status) Report" on October 20, 2017, the petroleum in 113 RUL A, according to the Veeder Root 350 ATG System, at Gas Station #7445, had been completely displaced by, and entirely full of, water, since October 15, 2017.

336. The Veeder Root/ATG Shift Report was materially altered before it was given to OSFM during their initial investigation of the scope, gravity and cause of the release from Gas station #7445. **See, Plaintiff's Ex. #50, p. 2.**

337. The Veeder Root/Shift ATG Report, for the UST System at Gas Station #7445, provided to OSFM concealed the information concerning the liquid contents and levels in 113 RUL A NORTH for both October 19, 2017, and October 20, 2017. **See, Plaintiff's Ex. #50, p. 2.**

338. Considering the events and circumstances of October 20, 2017, the most critical information concerning the contents of UST Tank 113 RUL A NORTH was the data concerning first, the gasoline content and volume, second, the water volume by gallons, and third, the water level by inches. This information and data are omitted from the ATG readings of October 19th and October 20th of 113 RUL A NORTH requested by and given to the OSFM.

339. By concealing this information OSFM could not initially determine the scope of the petroleum release as the tank volume showed 9816 gallons full of liquid. Only

defendants knew the liquid was really water. Not petroleum. These facts were concealed on the Shift, Tank Status, Report given to OSFM. **See, Plaintiff's Ex. #50, p. 2.**

340. The Veeder Root/ATG readings for the other UST's at Gas Station #7445 contain full and complete ATG information, including the readings for both the water volume and water height in each UST. **See, Plaintiff's Ex. #50, p. 2.**

341. The Shift/Tank Status Report shows every other UST at Gas Station #7445 on October 19, 2017, and October 20, 2017, with "0" gallons of water volume and "0.00" for water level by inches, which are normal findings. **See, Plaintiff's Ex. #50, p. 2.**

342. By concealing the critical information/data on the real liquid contents of 113 RUL A NORTH Defendants further placed the public, and first responders, in unnecessary danger.

343. By deleting/concealing both the water volume and water level from the Shift, Tank Status, Report, submitted to OSFM, OSFM was prevented from determining how much of a release they had to contend with in regards to both public health and safety and responding to the environmental damage created by the release of petroleum.

344. At the time the Veeder Root/ATG, Shift Report was submitted to OSFM, on or about October 20, 2017, the ATG data and information concerning 113 RUL A NORTH water volume and water level were altered, concealed, false, deleted, and/or incomplete; information that OSFM and others would need to adequately investigate, and respond to, the release of petroleum from Gas Station #7445.

345. By submitting to the OSFM materially false, altered information, and concealing critical data from the Veeder Root/ATG report, concerning the gasoline and

water volume and level in 113 RUL A NORTH, 415 ILCS 5/44(a); 5/44(g)(3) and 5/44(g)(4.5) were violated.

Inadequate Training and Supervision

346. 41 Ill. Adm. Code Section 176.600, is titled:

OPERATOR TRAINING.

347. 41 Ill. Adm. Code Section 176.610, **Definitions,** provides the following definitions:

> **"Certified Operator"**, means a Class A, B, or C operator who has completed all the training required under this Subpart for his or her particular operator training classification.
>
> **"Class A Operator"** is someone that has primary responsibility to operate and maintain a UST in accordance with applicable regulatory requirements. The Class A operator(s) responsibility often include managing resources and personnel, such as establishing work assignments, to achieve and maintain compliance with regulatory requirements.
>
> **"Class B Operator"** is someone who has day-to-day responsibility for implementing applicable UST regulatory requirements and standards. The Class B operatory typically implements in-fields aspects of UST operation, maintenance and record keeping at one or more UST facilities.
>
> **"Class C Operator"** is an employee who is responsible for initially addressing alarms or other indications of emergencies caused by spills or releases from UST's. The Class C operator typically controls or monitors the dispensing or sale of regulated substances.
>
> **"Operator Training"**, means the training required under this Subpart.
>
> **"Training program"**, means any program that provides information to and evaluates the knowledge of a Class A, Class B, or Class C Operator who a combination of both training and testing approved in advanced by OSFM in meeting requirements of this Subpart F.

348. 41 Ill. Adm. Code Section 176.615, states in part:

Class A, B, and C Operator Classifications

The owner of each UST or group of USTs at a facility must have a Class A, Class B, and Class C Operator designated and shall ensure that each is trained in accordance with this Subpart.

349. 41 Ill. Adm. Code 176.620, states:

Training

(a) A Class A, Class B, or Class C Operator satisfies the training requirements of this Subpart by completing both training and an examination, as determined to be appropriate by OSFM.

350. 41 Ill. Adm. Code 176.625, states:

Minimum Training requirements

OSFM will approve a training mechanism for Class A, Class B and Class C Operators to be implemented by OSFM approved providers. Training and related examinations under this Subpart shall cover and test for appropriate knowledge of Illinois UST regulations. Generally, Class A, B. and C Operators will be trained in the following:

a) For Class A Operators, subject matter shall include, but not be limited to, financial responsibility documentation requirements, notification requirements, release and suspected release reporting, temporary and permanent closure requirements, operator training requirements, and a general knowledge of USTs requirements, including regulations relating to spill prevention, overfill prevention, release detection, corrosion protection, emergency response, product and equipment compatibility and demonstration, environmental and regulatory consequences of releases, and related reporting, recordkeeping, testing and inspections. Class A operators must have the knowledge and skills to make informed decisions regarding compliance and to determine whether the appropriated individuals are fulfilling the operation, maintenance and recordkeeping requirements for UST systems in accordance with the subsection.

b) For Class B Operators, subject matter shall include, but not be limited to, components of UST systems, materials of UST components, methods of release detection and release prevention applied to UST components, reporting and recordkeeping requirements, operator training requirements, and the operation and maintenance requirements of USTs that relate to spill prevention, overfill prevention, release detection and related reporting, corrosion protection, emergency response and product and equipment

compatibility and demonstration, environmental and regulatory consequences of releases, and related reporting, recordkeeping, testing and inspections. Training for the Class B operator must cover the general requirements that encompass all regulatory requirements and typical equipment used at UST facilities or site-specific requirements that address only the regulatory requirements and equipment specific to the facility.

c) For Class C Operators, subject matter shall include, but not be limited to:

1) recommended responses to:

A) emergencies (such as, situations posing an immediate danger or threat to the public or to the environment requiring immediate action);

B) spill alarms; and

C) releases from a UST;

2) the locations and proper operation of emergency stops;

3) the use of other emergency equipment; and

4) notifying the appropriate authorities in response to such emergencies, alarms and releases.

351. At all relevant times Gas Station #7445 did not have any competent Class A, B or C Operators employed at Gas Station #7445.

352. The fact defendant MANOJ V. signed the OSFM Red Tag Notification on August 3, 2016 and November 9, 2016, and then allow petroleum to be delivered into 113 RUL A NORTH on November 14, 2016, and January 9, 2017, illustrate the inadequate training employed by MPC, SPEEDWAY and MANOJ V.

353. Under MANOJ V's management, the employees at Gas Stations #7445, were not aware of the minimal requirements of LUST and the rules and regulations

promulgated by the OSFM concerning UST's through 41 Ill. Adm. Code 174, 175, 176, and 177.

354. Defendant MANOJ V. was the manager of Gas Station #7445 on October 20, 2017. As such, defendant VALIATHARA was responsible for ensuring that all employees at the station held a Class C Operators certification and be familiar with LUST and basic rules, regulations, and procedures thereunder concerning UST's at Gas Station #7445.

355. At all relevant times the Class C operators, including defendant, MANOJ V., did not know who the designated Class A or Class B operators were for Gas Station #7445.

356. As shown above under the six 5/42(h) civil damages factors and 5/44 criminal violations, in 2017, Gas Station #7445 managers and employees did not follow and/or ignored the requirements of LUST and 41 Ill. Adm. Code 174, 175 and 176 and 430 ILCS 15.1 *et seq.* the Gasoline Storage Act.

357. On November 14, 2016, MPC transported and pumped over 8000 gallons into 113 RUL A NORTH/OSFM #1 when the tank was out of service and had not been registered to accept fuel pursuant to OSFM regulations, 41 Ill. Adm. Code 176.810(a).

358. On January 9, 2017, defendant MPC unlawfully pumped an additional 1,000 gallons of petroleum into 113 RUL A NORTH/OSFM #1.

359. Exceeding 95% capacity in a 10,000 gallon UST was, and is, a dangerous, illegal, and unsafe use of a UST in violation of 430 ILCS 15/1, The Gasoline Storage Act.

360. Isolated from Gas Station #7445's dispensing system, no petroleum was pumped out of 113 RUL A NORTH and the Veeder Root/ATG continually reported a total

volume of 9,816 gallons of liquid, initially petroleum, then water, in 113 RUL A NORTH from January 9, 2017, through October 20, 2017, 285 consecutive days.

361. The Veeder-Root/ATG on January 9, 2017, activated alarms placing 113 RUL A NORTH in both high product alarm and tank maximum product alarm status, which means that the fuel level in the UST had exceeded a safe working capacity.

362. A tank maximum alarm requires a critical work order requiring the alarm to be resolved within eight (8) hours of receipt.

363. On January 10, 2017, a SPEEDWAY technician responded to the critical work order generated as a result of the high product and maximum product alarms activated on January 9, 2017. The technician verified that the USTs settings and its ATG floats were working properly. The technician noted that 113 RUL A NORTH/ OSFM #1 had long been "problematic," and called contractor DRW Services to investigate further, and left the work order unresolved.

364. On January 12, 2017, contractor DRW Services responded to the technician's request but was not asked to address OSFM #1's high product and maximum product alarms.

365. Defendant MANOJ V. verified that the January 9, 2017, critical work order was completed when that was not true with respect to 113 RUL A NORTH/OSFM #1, which remained active in both high product and maximum product alarm status.

366. At all relevant times, pursuant to instructions from corporate headquarters, Veeder Root/ATG warnings and alarms concerning 113 RUL A NORTH were silenced, and then ignored, at Gas Station #7445 by MANOJ V. and the employees he managed at Gas Station #7445.

367. MPC and Speedway's employees at Gas Station #7445 were incompetent in relation to following LUST.

368. At all relevant times co-defendant SPEEDWAY did not require Class C Operators of their USTs at Gas Station #7445 to follow the requirements of LUST and regulations thereunder.

369. From January 10, 2017, until after the fires and explosions of October 20, 2017, MANOJ V., pursuant to orders from corporate headquarters, allowed employees at Gas Station #7445 to ignore both warnings and alarms being activated concerning hazards and dangers in the UST system, including UST 113 RUL A NORTH/OSFM #1.

370. Beginning in January, 2017, the tank high product alarm and tank maximum product alarms on 113 RUL A NORTH were routinely activated, and then silenced and ignored, until after the fires and explosions of October 20, 2017. Defendant MANOJ V. was the manager of Gas Station #7445 during this time.

371. On October 5, 2017, 113 RUL A NORTH/OSFM #1 high water warning was activated and again, not cleared, until after the fires and explosions of October 21, 2017.

372. On October 9, 2017, 113 RUL A NORTH Tank high water alarm was again activated and, again, was not cleared until October 21, 2017, after the fires and explosions.

373. On October 10, 2017, it was noted by one of defendant SPEEDWAY technicians that, "water was filling in (as fast) as it was being removed," from UST 113 RUL A NORTH.

374. October 11, 2017, was the last day MANOJ V. took any effective corrective action regarding 113 RUL A NORTH, despite it filling up with water and releasing

petroleum into the environment and presenting a clear danger to the public health and welfare, including plaintiffs.

375. On or about October 12, 2017, October 17, 2017, and again on October 19, 2017, defendant MPC made deliveries of petroleum to the UST system at Gas Station #7445.

376. MPC, when making deliveries of petroleum, had physical access to Gas Station #7445's Veeder Root/ATG System.

377. On October 11, 2017, the tank high product alarm again went off, and was again silenced, and not cleared, until after the fires and explosions of October 20, 2017.

378. On October 11, 2017, UST 113 RUL A NORTH's tank maximum product alarm was activated, and again, not cleared until after the fires and explosions of October 20, 2017.

379. On October 12, 2017, DRW, one of MPC/SPEEDWAY's contractors, sent an e-mail to Speedway headquarters, including photos taken on October 10th, with a description of 113 RUL A NORTH in disrepair and the fact that the water table was above the USTs. DRW's photos showed a mixture of gasoline and water MANOJ V. had access to this information.

380. On October 15, 2017, 113 RUL A NORTH/Tank #3 invalid fuel level alarm was activated and, again, not cleared until after the fires and explosions of October 20, 2017.

381. At no time between October 5, 2017, and October 20, 2017, before the fires and explosions, did MANOJ V. call IEMA, OSFM, IEPA, Westmont Fire Department, or

any other local authority, to report a potential or suspected release of petroleum, even after the entire tank had been filled with water no later than October 15, 2017.

382. MANOJ V. did not ever consider, or have competent knowledge of, how to respond to a petroleum release from a UST; how to respond to emergency situations involving suspected and/or confirmed releases of petroleum; and when to notify the appropriate authorities in response to such emergencies, warnings, and alarms, concerning petroleum releases from UST's.

383. In October, 2017, MANOJ V. did not voluntarily disclose, remedy and/or respond to potential or suspected releases of petroleum, but ignored warnings, silenced alarms, ignored dangers signaled by the alarms, and then concealed the data/information concerning leaking UST's from OSFM authorities when requested after the fires and explosions of October 20, 2017.

Public Policy

384. In addition to the mandates and public policies stated in Article XI of the Illinois Constitution and Title I of the Act, 415 ILCS 5/2, the purpose of Civil Penalties/Damages for those persons who violate the Act, including LUST, are stated in the Policies Statement of the Illinois EPA, which states: **Compliance and Enforcement**

> "The Illinois EPA's enforcement program seeks to obtain prompt compliance with the Illinois Environmental Protection Act and regulations promulgated thereunder, pose a deterrent to actions that delay or prevent prompt compliance, provide an incentive for timely and responsible compliance behavior, and ensure that persons who comply with environmental requirements are not placed at a competitive disadvantage.
>
> To successfully implement its programs, the Illinois EPA uses compliance assistance and education, compliance inspections and reviews, and finally enforcement. Each is needed, and each complements the others. We all recognize

> that most regulated entities comply voluntarily. Others may not comply, because of a lack of information, or through negligence, or actual intent to avoid the requirements and costs that may go with them. Deterrence can only be had if the enforcement option is always available, and is pursued timely and consistently. If not timely, deterrence will be diminished by the distance in time between the violation and the pain of the penalty. If not consistently applied, fairness is lacking and competitive disadvantages may result."

Survival of Action

385. By the terms of the Act, generally, and LUST specifically, applicable and controlling case law, and the clear and strong public policy, all remedies and damages of any kind granted to, or allowed to be sought by, plaintiff's decedent, MARGARET L. RICE, under the Act and LUST, survived her death; that had she survived she would have been entitled to bring an action for all remedies, damages, injuries and loss under the terms of the Act and LUST, applicable, controlling case law, and the strong public policy underlying the Act and LUST.

WHERERFORE, Plaintiff, LAURA E. RICE, as Special Representative of the Estate of MARGARET L. RICE, deceased, plaintiff that judgment be entered in her favor and against MANOJ VALIATHARA for his violations of the Act/LUST; plaintiff requests all damages and remedies allowed pursuant to the Act and LUST, in excess of the minimal jurisdictional amount of the Law Division, Cook County Circuit Court.

COUNT IV – NEGLIGENCE

RICE v. MARATHON PETROLEUM CORPORATION

1-172. Plaintiff, LAURA E. RICE, as Special Representative of the Estate of MARGARET L. RICE, deceased, (hereafter "plaintiff") by and through their attorneys, BUDIN LAW OFFICES, reallege and incorporate paragraphs 1 through 172 of Facts

Common to All Counts, as though fully set forth herein as Paragraphs 1 – 172 of this Count IV, complaining of defendant MARATHIN PETROLEUM CORPORATION, alleges and states as follows:

173. At all times relevant, MARATHON PETROLEUM CORPORATION, (hereafter "MPC") was the member, manager, principal, owner and/or Beneficial Owner of MPC INVESTMENT LLC and SPEEDWAY LLC, and that in doing the acts herein alleged, was acting within the course and scope of said membership, management, agency and/or ownership.

174. At all times relevant, MPC individually, and by and through its officers, agents, managers, distributors, subsidiaries, employees, and/or representatives, owned Gas Station #7445 and the gasoline contained in the USTs and UST System.

175. At all times relevant, MPC, individually, and by and through its officers, agents, managers, distributors, subsidiaries, employees, partnerships and/or representatives, managed, maintained controlled, and/or operated Gas Station #7445 and the gasoline contained in the USTs and UST System.

176. At all times relevant, defendant MPC owned the UST's located at Gas Station #7445.

177. At all times relevant, MPC individually, and by and through its officers, agents, managers, distributors, subsidiaries, employees, partnerships and/or representatives manufactured the gasoline contained in the UST's at Gas Station #7445.

178. At all times relevant, MPC, individually, and by and through its agents, members, managers, subsidiaries, employees, subcontractors, partnerships and/or

representatives supplied and/or transported gasoline to Gas Station #7445, including the gasoline in UST 113 RUL A NORTH/OSFM #1.

179. At all times relevant, MPC, individually, and by and through its agents, members, managers, subsidiaries, employees, subcontractors, partnerships and/or representatives inspected, repaired, maintained and/or serviced the UST's at Gas Station #7445.

180. At all times relevant, MPC, individually, and by and through its agents, managers, distributors, subsidiaries, employees, subcontractors, partnerships and/or representatives, owed Plaintiff, and all other members of the public, a duty to use ordinary care and caution in the ownership, management, maintenance, repairs, and/or control of Gas Station #7445, the USTs, the UST System and gasoline contained therein so as not to present a danger to members of the public, including plaintiff, and their environment.

181. Notwithstanding their duty, and in breach thereof, MPC, individually, and by and through the acts and/or omissions of its agents, managers, distributors, employees, subcontractors, partnerships and/or representatives, were then and there guilty of one or more of the following acts and/or omissions:

a) Failed to adequately respond to the safety warnings of the UST ATG sensors indicating potential problems with leakage and/or other irregularities in their UST's; or

b) Failed to adequately respond to the safety alarms of the UST ATG sensors indicating potential problems with leakage and/or other irregularities in their UST's; or

c) Carelessly and negligently allowed the release, displacement, and/or discharge of gasoline from Gas Station #7445, USTs into the ground water, the Sanitary Sewer System, Storm Sewer System and/or the environment; or

d) Carelessly and negligently caused its gasoline to be stored in a defective

and/or compromised UST at Gas Station #7445; or

e) Carelessly and negligently allowed the continued release, displacement, discharge, and/or migration of gasoline from UST OSFM #1 through the ground water, Sanitary Sewer System, Storm Sewer System and the environment without warning the surrounding community and/or any public entities; or

f) Failed to warn members of the public, including plaintiff, of the potential for explosions in their residences and homes due to the gasoline release from Gas Station #7445 which migrated throughout the vicinity of the local community, up to and including plaintiff's residence; or

g) Created a substantial danger to the community environment, including the plaintiff's living environment, and public health, including plaintiff's health and welfare by allowing the release of gasoline from their UST; or

h) Caused a substantial danger to the public environment, including the plaintiff's living environment, and public health, including plaintiff's health, and welfare by allowing the release of gasoline from their UST; or

I) Failed to timely warn plaintiff and other members of the public not to activate their laundry dryers and other electric appliances that could create a spark or had a heating element, so as not to cause explosions which would injure them and/or others; or

j) Was otherwise careless and negligent in their ownership, management, maintenance, control, repair, and operation of Gas Station #7445, UST, 113 RUL A NORTH/OSFM #1 and gasoline contained therein.

182. As a direct and proximate result of one or more of the aforesaid negligent or careless acts and/or omissions of defendant, MARATHON PETROLEUM CORPORATION, plaintiff MARGARET L. RICE, deceased, was violently thrown about due to the blast from the explosion; suffering severe burns over large parts of her total body surface, and sustained additional bodily injuries from the blast; as a further direct and proximate result plaintiff suffered severe emotional distress. As a further direct and proximate result of her burns and injuries plaintiff became disabled, and suffered the loss of a normal life as well as great physical pain and mental suffering and continued to suffer

great physical pain and mental suffering and was prevented from attending to her usual and customary affairs and duties until her death on November 22, 2019.

183. Had she survived plaintiff decedent MARGARET L. RICE, would have been entitled to bring an action for such personal and pecuniary damages, and such action has survived her, pursuant to 755 ILCS 5/27-6, commonly known as the Survival Act.

WHERERFORE, Plaintiff, LAURA E. RICE, as Special Representative of the Estate of MARGARET L. RICE, deceased, requests that judgment be entered in its favor and against Defendant MARATHON PETROLEUM CORPORATION, in an amount in excess of Seventy-Five Thousand Dollars ($75,000.00) and for such other or further relief as this Court deems equitable and just.

COUNT V– NEGLIGENCE

RICE v. SPEEDWAY LLC

1-172. Plaintiffs, LAURA E. RICE, as Special Representative of the Estate of MARGARET L. RICE, deceased, (hereafter "plaintiff") by and through their attorneys, BUDIN LAW OFFICES, reallege and incorporate paragraphs 1 through 172 of Facts Common to All Counts, as though fully set forth herein as Paragraphs 1 – 172 of this Count VI, and complaining of defendant SPEEDWAY, LLC., alleges and states as follows:

173. At all times relevant, SPEEDWAY LLC (hereafter "Speedway") owned Gas Station #7445, the USTs, UST System and gasoline contained therein.

174. At all times relevant, SPEEDWAY operated Gas Station #7445, the USTs, UST System and gasoline contained therein.

175. At all times relevant, SPEEDWAY managed Gas Station #7445, the USTs, UST System and gasoline contained therein.

176. At all times relevant, SPEEDWAY maintained Gas Station #7445, the USTs, UST System and gasoline contained therein.

177. At all times relevant, SPEEDWAY controlled Gas Station #7445, the USTs, UST System and gasoline contained therein.

178. SPEEDWAY, individually, and by and through its members, managers, employees, agents, subcontractors and/or representatives owed Plaintiff, and the public at large, a duty to use ordinary care and caution in the ownership, operation, management, maintenance repair and/or control of Gas Station #7445, the USTs, the UST System and gasoline contained therein.

179. Notwithstanding their duty, and in breach thereof, SPEEDWAY, individually, and by and through the acts and/or omissions of its agents, managers, distributors, employees, subcontractors, partnerships and/or representatives:

a) Failed to adequately respond to the safety warnings of the UST ATG sensors indicating potential problems with leakage and/or other irregularities in their UST's; or

b) Failed to adequately respond to the safety alarms of the UST ATG sensors indicating potential problems with leakage and/or other irregularities in their UST's; or

c) Carelessly and negligently allowed the release, displacement, and/or discharge of gasoline from Gas Station #7445, USTs into the ground water, the Sanitary Sewer System, Storm Sewer System and/or the environment; or

d) Carelessly and negligently caused its gasoline to be stored in the defective and/or compromised UST at Gas Station #7445; or

e) Carelessly and negligently allowed the continued release, displacement, discharge, and/or migration of gasoline from UST OSFM #1 through the ground water, Sanitary Sewer System, Storm Sewer System and the environment without warning the surrounding community and/or any public entities; or

f) Failed to warn members of the public, including plaintiff, of the potential for explosions in their residences and homes due to the gasoline release from Gas Station #7445 which migrated throughout the vicinity of the local community, up to and including plaintiff's residence; or

g) Created a substantial danger to the community environment, including the plaintiff's living environment, and public health, including plaintiff's health and welfare by allowing the release of gasoline from their UST; or

h) Caused a substantial danger to the public environment, including the plaintiff's living environment, and public health, including plaintiff's health, and welfare by allowing the release of gasoline from their UST; or

i) Failed to timely warn plaintiff and other members of the public not to activate their laundry dryers and other electric appliances that could create a spark or had a heating element, so as not to cause explosions which would injure them and/or others; or

j) Was otherwise careless and negligent in their ownership, management, maintenance, control, repair, and operation of Gas Station #7445, UST, 113 RUL A NORTH/OSFM #1 and gasoline contained therein.

180. As a direct and proximate result of one or more of the aforesaid negligent or careless acts and/or omissions of defendant, SPEEDWAY, LLC, plaintiff MARGARET L. RICE, deceased, was violently thrown about due to the blast from the explosion; suffering severe burns over large parts of her total body surface, and sustained additional bodily injuries from the blast; as a further direct and proximate result plaintiff suffered severe emotional distress. As a further direct and proximate result of her burns and injuries plaintiff became disabled, and suffered the loss of a normal life as well as great physical pain and mental suffering and continued to suffer great physical pain and mental suffering and was prevented from attending to her usual and customary affairs and duties until her death on November 22, 2019.

181. Had she survived plaintiff decedent MARGARET L. RICE, would have been entitled to bring an action for such personal and pecuniary damages, and such action has survived her, pursuant to 755 ILCS 5/27-6, commonly known as the Survival Act.

WHERERFORE, Plaintiffs LAURA E. RICE, as Special Representative of the Estate of MARGARET L. RICE, deceased requests that judgment be entered in its favor and against Defendant SPEEDWAY LLC, in an amount in excess of Seventy-Five Thousand Dollars ($75,000.00) and for such other or further relief as this Court deems equitable and just.

COUNT VI – NEGLIGENCE

RICE v. MANOJ VALIATHARA

1-172. Plaintiffs LAURA E. RICE, as Special Representative of the Estate of MARGARET L. RICE, deceased, (hereafter "plaintiff") by and through their attorneys, BUDIN LAW OFFICES, reallege and incorporate paragraphs 1 through 172 of Facts Common to All Counts, as though fully set forth herein as Paragraphs 1 – 172 of this Count VIII.

173. At all times relevant, MANOJ VALIATHARA, managed Gas Station #7445, the USTs, UST System and gasoline contained therein.

174. MANOJ VALIATHARA, individually, and by and through his agents, subcontractors and/or representatives, owed Plaintiff MARGARET L. RICE, deceased, a duty to use ordinary care and caution in the management, operation, maintenance and control of Gas Station #7445, the USTs, the UST System and gasoline contained therein.

175. Notwithstanding said duty, and in breach thereof, MANOJ VALIATHARA, individually, and by and through the acts and/or omissions of his co-workers, and/or

employees that he managed:

a) Failed to adequately respond to the safety warnings of the UST ATG sensors indicating potential problems with leakage and/or other irregularities in their UST's; or

b) Failed to adequately respond to the safety alarms of the UST ATG sensors indicating potential problems with leakage and/or other irregularities in their UST's; or

c) Carelessly and negligently allowed the release, displacement, and/or discharge of gasoline from Gas Station #7445, USTs into the ground water, the Sanitary Sewer System, Storm Sewer System and/or the environment; or

d) Carelessly and negligently caused its gasoline to be stored in the defective and/or compromised UST at Gas Station #7445; or

e) Carelessly and negligently allowed the continued release, displacement, discharge, and/or migration of gasoline from UST OSFM #1 through the ground water, Sanitary Sewer System, Storm Sewer System and the environment without warning the surrounding community and/or any public entities; or

f) Failed to warn members of the public, including plaintiff, of the potential for explosions in their residences and homes due to the gasoline release from Gas Station #7445 which migrated throughout the vicinity of the local community, up to and including plaintiff's residence; or

g) Created a substantial danger to the community environment, including the plaintiff's living environment, and public health, including plaintiff's health and welfare by allowing the release of gasoline from their UST; or

h) Caused a substantial danger to the public environment, including the plaintiff's living environment, and public health, including plaintiff's health, and welfare by allowing the release of gasoline from their UST; or

I) Failed to timely warn plaintiff and other members of the public not to activate their laundry dryers and other electric appliances that could create a spark or had a heating element, so as not to cause explosions which would injure them and/or others; or

j) Was otherwise careless and negligent in their ownership, management, maintenance, control, repair, and operation of Gas Station #7445, UST, 113 RUL A NORTH/OSFM #1 and gasoline contained therein.

176. As a direct and proximate result of one or more of the aforesaid negligent or careless acts and/or omissions of defendant, MANOJ VALIATHARA, plaintiff MARGARET L. RICE, deceased, was violently thrown about due to the blast from the explosion; suffering severe burns; and sustained additional bodily injuries from the blast; as a further direct and proximate result plaintiff suffered severe emotional distress. As a further direct and proximate result of her burns and injuries plaintiff became disabled, and suffered the loss of a normal life as well as great physical pain and mental suffering and continued to suffer great physical pain and mental suffering and was prevented from attending to her usual and customary affairs and duties until her death on November 22, 2019.

177. Had she survived plaintiff decedent MARGARET L. RICE, would have been entitled to bring an action for such personal and pecuniary damages, and such action has survived her, pursuant to 755 ILCS 5/27-6, commonly known as the Survival Act.

WHERERFORE, Plaintiffs LAURA E. RICE, as Special Representative of the Estate of MARGARET L. RICE, deceased, requests that judgment be entered in her favor and against MANOJ VALIATHARA, in an amount in excess of Seventy-Five Thousand Dollars ($75,000.00) and for such other or further relief as this Court deems equitable and just.

Respectfully Submitted,

BUDIN LAW OFFICES

JOHN J. BUDIN

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Rice v. Marathon, et. al. 18 L 000783
First Amended Complaint Exhibit List

1. Secretary of State filing information, 31 pages
2. Marathon Petroleum Corporation Profile from Reuter.com 8 pages
3. Marathon 2017, SEC Form 10-K Report of February 28, 2018, 14 pages
4. Marathon Petroleum Corporation Amended and Restated By-Laws, 40 pages
5. Marathon SEC 425 conference transcript, dated April 30, 2018, 24 pages
6. August 2, 2020, Marathon Petroleum Corporation News Release, 4 pages
7. Speedway Fuel Safety Publication, 5 pages
8. Speedway Safety Data Sheet, 17 pages
9. March 15, 1989, Application for Permit of Underground Storage Tanks, 5 pages
10. December 4, 2015, Travelers Insurance Surety Bond with list of Illinois Underground Storage Tanks owned by Marathon Petroleum Corporation and Speedway, 20 pages
11. Hinsdale Sanitary Permit, dated December 1, 1989
12. Site Investigation Completion Report (SICR) dated February 17, 2017, 32 pages
13. October 5, 2017, Work Order #001102293094
14. October 5, 2017, Work Order #001102293316, 2 pages
15. October 9, 2017, Work Order #001102299857, 2 pages
16. October 10, 2017, Ziron Work Order #77797901, 2 pages
17. 9 Photographs of Veeder Root TLS-350, 9 pages
18. Veeder Root Inform.Net 4.0 Software Information, 2 pages
19. ATG Tank Status Reports, 4 pages
20. Alarm History Report dated October 22, 2017, 9 pages

21. Veeder Root Automatic Tank Gauge Monitoring/Inventory Report, 14 pages

22. Apparent Causal Events

23. Speedway Store #7445 Chronology: 10/01/17 – 10/20/17, 2 pages

24. December 13, 2017, Speedway Gasoline Release Investigation Report, 7 pages

25. Village of Westmont Fire Department Incident Report #17-0003256, 10 pages prepared by Deputy Chief James Connolly

26. November 7, 2017, Medical Report from Thomas Vizinas, D.O.

27. 14 photographs of plaintiff taken on or about November 10, 2017; 1 photograph of plaintiff with twin sister Mildred Schroeder, taken March, 2017, 80th birthday party

28. October 20, 2017, Work Order #001102320799, 1 page

29. October 20, 2017, OSFM Emergency Response Investigation Report Facility, 4 pages

30. October 20, October 22, October 23, and October 28, 2017, E-mails of Fred Schneller and Scott Johnson of OSFM, 10 pages

31. Photograph of 10,000 gallon UST being removed from Gas Station #7445

32. Media Reports, 26 pages

33. James Wilkins October 20, 2017 and October 21, 2017, E-Mail chain, 4 pages

34. Marathon Petroleum Corporation E-Mail chain of October 21, 2017, 7 pages

35. State of Illinois Verified Complaint, 23 pages

36. November 13, 2017, Agreed Immediate and Preliminary Injunction Order, 7 pages

37. August 3, 2016, Record of Red Tag, 2 pages

38. August 3, 2016, Notice of Violation, 5 pages

39. November 7, 2016, Notice of Violation – Progress Report

40. November 7, 2016, Notice for Underground Storage Tank, 5 pages

41. October 21, 2017, E-Mail from Randy Carben of OSFM to Scott Johnson

42. October 9, 2017, Ziron Work Order, 4 pages

43. M & M Mid Valley Records, dated September 24, 2019

44. OSFM Red Tags Tank Information, 50 pages

45. Speedway July- August, 2016, E-Mail chain, and 2 photographs, August 25, 2016, letter from Speedway to IEPA, 13 pages

46. August 23, 2016, US Tank Report to Co-defendant Speedway

47. September 1, 2016, Red Tag and Notice of Violation from OSFM, 6 pages

48. October 14, 2016, Notice of Violation – Progress Report, 3 pages

49. November 9, 2016, UST Notice of Violation, 4 pages

50. October 23 and November 2, 2017, E-Mail chain of Aaron Siegler, Scott Johnson, Fred Schneller of OSFM, 2 pages

51. October 27, 2017, E-Mail from Laurie M. Strabley of Marathon Petroleum Corporation (Withdrawn)

52. Mary Torricelli of OSFM E-Mails of August 30, 2017, August 31, 2017, and October 5, 2017, 10 pages

FILED
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IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2018L000783

#37188

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

LAURA E. RICE, as Special Representative of the Estate of MARGARET L. RICE, deceased, Plaintiff, vs. MARATHON PETROLEUM CORPORTAION, an Ohio Corporation, SPEEDWAY, LLC., a Delaware Limited Liability Company, and MANOJ VALIATHARA, Defendants.	)	No.: 18 L 000783 Consolidated w/18 L 010930

PLAINTIFF'S MOTION FOR PUNITIVE DAMAGES BY OPERATION OF LAW AS TO COUNTS I, II, AND III, OF HER AMENDED COMPLAINT AT LAW, PURSUANT TO 415 ILCS 5/1 ET SEQ., ILLINOIS ENVIRONMENTAL PROTECTION ACT AND 415 ILCS 5/57 ET SEQ.,LEAKING UNDERGROUND STORAGE TANKS PROGRAM (LUST)

Now comes Plaintiff LAURA E. RICE, as Special Representative of the Estate of MARGARET L. RICE, deceased, by and through her attorneys BUDIN LAW OFFICES, and for her Motion for Punitive Damages by Operation of Law as to Counts I, II, and III, of her Amended Compliant at Law, pursuant to 415 ILCS 5/1, et seq., Illinois Environmental Protection Act, and 415 ILCS 5/57 et seq., Leaking Underground Storage Tanks Program (LUST), in support thereof, Plaintiff states as follows:

(1) On October 20, 2017, Plaintiff suffered extensive second degree burns and other injuries as a result of a petroleum release from an underground storage tank at the Speedway Gas Station, Westmont, Illinois.

(2) Counts I, II and III of Plaintiff's Amended Complaint are brought pursuant

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to the Illinois Environmental Protection Act, generally, and Title XVI of the Act, the Petroleum Under Ground Storage Tanks, known as the Leaking Underground Storage Tanks Program. (LUST) See, 415 ILCS 5/57.1-19.

(3) Pursuant to the Act and LUST each of the three defendants are owners and/or operators of the underground storage tanks, (hereafter USTs) at the Speedway Gas Station in October, 2017, when the release of petroleum occurred.

(4) Pursuant to the Act and LUST each of the Defendants are strictly liable for all of Plaintiff's damages, injuries, and/or loss, including statutory punitive damages.

(5) Common Law rules and principles do not apply to Counts I, II and III of Plaintiff's Amended Complaint. Rather, they are governed by the Act.

(6) In further support of her Motion for Punitive Damages by Operation of Law as to Counts I, II and III of her Amended Complaint, Plaintiff submits the attached Memorandum of Law in support.

WHEREFORE, Plaintiff respectfully requests this Court enter an Order granting Plaintiff's Motion for Punitive damages by Operation of Law as to Counts I, II, and III, of her Amended Compliant at Law pursuant to 415 ILCS 5/1, et seq., Illinois Environmental Protection Act and 415 ILCS 5/57, et seq. Leaking Underground Storage Tanks Program (LUST).

Respectfully Submitted,

BUDIN LAW OFFICES

JOHN J. BUDIN

BUDIN LAW OFFICES -37188

FILED
3/29/2021 2:25 PM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2018L000783

#37188

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

LAURA E. RICE, as Special Representative of the Estate of MARGARET L. RICE, deceased, Plaintiff, vs. MARATHON PETROLEUM CORPORTAION, an Ohio Corporation, SPEEDWAY, LLC., a Delaware Limited Liability Company, and MANOJ VALIATHARA, Defendants.	)	No.: 18 L 000783 Consolidated w/18 L 010930

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF HER MOTION FOR PUNITIVE DAMAGES BY OPERATION OF LAW AS TO COUNTS I, II, AND III, OF HER AMENDED COMPLAINT PURSUANT TO 415 ILCS 5/1 ET SEQ, ILLINOIS ENVIRONMENTAL PROTECTION ACT; AND 415 ILCS 5/57 ET SEQ, LEAKING UNDERGROUND STORAGE TANKS PROGRAM (LUST)

I. APPLICABLE LAW

(1) The Illinois Environmental Protection Act, (hereinafter "Act") was created to establish a unified, statewide program to protect the environment. The purpose of the Act is to quickly remove hazardous releases, or the possibility of such of a release, with the burden of expense imposed on the responsible party. People ex. rel. Madigan v. Stateline Recycling, LLC, 2020 Ill. 124417, P23, 2020 Ill. LEXIS 1044, 10; National Marine Inc. v. Illinois EPA, 159 Ill. 2d 381, 386, 1994 LEXIS 93, 6 (1994); City of Quincy v. Carlson, 163 Ill. App. 3d 1049, 1053, 1987 Ill. App. LEXIS, 3739, 6 (Ill. App. Ct. 4th Dist. 1987) (PLA denied, 119 Ill. 2d 553, 1988 Ill. LEXIS 755).

(2) The Act contemplates the participation of individual, private persons to

effectuate the Act's purpose of restoring, protecting, and enhancing the quality of the environment. The interaction of the roles of the Pollution Control Board, the Environmental Protection Agency, and private persons occurs in the enforcement provisions of the Act. Landfill, Inc. v. Pollution Control Board, 74 Ill. 2d 541, 555-556, 1978 Ill LEXIS 400,14,17 (Ill. 1978). The purpose of the Act is to protect the health of the citizens of the State of Illinois. People ex. rel. Madigan v. Excavating & Lowboy Service, 388 Ill. App. 3d 554, 562, 2009 Ill. LEXIS 49, 12,15-16, (1st Dist.); Accord, Tri-County Landfill Company v. Illinois Pollution Control Board, 41 Ill. App. 3d 249, 258, 1976 Ill. App. LEXIS 2939, 20 (2d Dist. 1976).

(3) The Legislative Policy underlying the adoption of the strict measures found in the Act is the protection and enhancement of the quality of the environment achieved through prompt alleviation of environmental damage which poses serious endangerment to the public health and welfare. The Act provides for accountability through suits against its alleged violators. People ex. rel. Madigan v. Excavating & Lowboy Service, 388 Ill. App. 3d 554, 562, 2009 Ill. LEXIS 49,11-12,15-16, (1st Dist. 2009). City of Quincy v. Carlson, 163 Ill. App. 3d 1049, 1053,1054,1987 Ill. App. LEXIS 3739, 5.

(4) Statutes which are enacted for the protection and preservation of public health, such as the Act, are to be given extremely liberal construction for the accomplishment and maximization of their beneficial objectives; consequently, for example, under the Act, the lack of a pre-enforcement hearing does not offend due process principals. City of Quincy v. Carlson, 163 Ill. App. 3d 1049, 1054, 1987 Ill. App.

LEXIS 3739, 8; Accord, People v. Conrail Corp., 251 Ill. App. 550, 560,1993 Ill. App. LEXIS 1426, 20, (4th Dist. 1993);

(5) States, such as Illinois, may enact their own environmental protection laws. However, those laws cannot be less stringent than their Federal counterparts. State laws may be more stringent than their Federal counterparts. Dydio v. Hesston Corporation, 887 F. Supp. 1037,1040; 1995 U.S. Dist. LEXIS 7061, 5. (N.D. Ill. 1995); First of America Trust v. Armstead, 171 Ill. 2d 282, 284-285; 1996 Ill. LEXIS 32, 2, (1996); See also, 415 ILCS 5/20(6)(10)(12).

(6) Common Law rules and principles do not apply to actions brought pursuant to the Act. National Marine v. Illinois EPA, 159 Ill. 2d 381, 392,1994 Ill. LEXIS 93, 16, People v. N.L. Industries, 152 Ill. 2d 82, 97, 1992 Ill. LEXIS 191,19,20 (1992) People Ex. Rel. Madigan v. Excavating & Lowboy Services, 388 Ill. App. 3d 554, 560-561, 2009 Ill. App. LEXIS 49, 11-12; Accord, People v. Mika Timber Co., 221 Ill. App. 3d 192, 193, 1991 Ill. App. LEXIS 1935, 3,4 (5th Dist. 1991) .

(7) The Act is administered, governed, and implemented by 35 Illinois Administrative Code.

(8) When examining statutes under the Act, it's terms are not, "ambiguous in any way. Furthermore, the language employed, particularly in the Environmental Act with it's extensive explanatory provisions (415 ILCS 5/2) is clear and the meaning, intent, and purpose are easily ascertained." People ex. rel. Madigan v. Excavating & Lowboy Services, 388 Ill. App. 3d 554,562, 2009 Ill. App. LEXIS 49, 15-16.

(9) In the case at bar the clear, unambiguous terms of the Act, including those

found in LUST, are the laws that govern Counts I, II and III of Plaintiff's Amended Complaint at Law.

(10) Under the Act and LUST Defendant, MPC is an owner and/or operator of the USTs at Gas Station #7445 in October, 2017.

(11) Under the Act and LUST Defendant, Speedway LLC is an owner/operator of the USTs at Gas Station #7445 in October, 2017.

(12) Under the Act and LUST Defendant, Manoj Valiathara was an operator of the USTs at Gas Station #7445 in October, 2017.

(13) In the case at bar there is no reasonable doubt that the nearly ten thousand (10,000) gallons of petroleum released from Gas Station # 7445 during October, 2017, caused the explosion which blew up Plaintiff's residence.

(14) The heat from the explosion caused bodily injuries and extensive second degree burns over more than 10% of Plaintiff's total body surface. See, Plaintiff's Ex. No. 23, November 7, 2017, medical report of Thomas Vizinas, D.O. and Plaintiff's Ex. No. 24, 14 photos of Plaintiff.

(15) The Illinois Environmental Protection Agency, (hereinafter IEPA), Office of the State Fire Marshall, (hereinafter OSFM), Tri-State Fire District, and the Westmont Fire Department, all investigated the cause of the release and explosion at Plaintiff's residence.

(16) All four government agencies concluded that the petroleum release from Gas Station No. 7445 caused the explosion which caused Plaintiff's bodily injuries and burns on October 20, 2017.

(17) In People v. NL Industries, 152 Ill. 2d 82, 1992 Ill. LEXIS 191, (1992) the

Court ruled that Circuit Courts hold concurrent jurisdiction to hear matters involving the Act. The Court also ruled:

> "With few exceptions, circuit courts have original jurisdiction over all justiciable matters. While the legislature generally cannot deprive courts of this jurisdiction, an exception arises in administrative actions. Because it establishes administrative agencies and statutorily empowers them, the legislature may vest exclusive jurisdiction in the administrative agency. Where the legislature enacts a comprehensive statutory scheme, creating rights and duties which have no counterpart in Common Law or equity, the legislature may define the, "justiciable matter," in such a way as to preclude or limit the jurisdiction of the Circuit Courts." 152 Ill. 2d at 97; 1992 Ill. LEXIS 191, 11-12.

(18) In National Marine Inc. v. Illinois EPA, 159 Ill. 2d 381, 385, 386, 1994 Ill. LEXIS 93, 6-7 (1994) plaintiff, National Marine, was contesting a Notice of Violation issued by IEPA concerning a potential release or substantial threat of a, "release", of a hazardous substance or, "pesticide", on property owned by plaintiff. In denying the plaintiff's declaratory action and prayer for injunctive relief in the issuance of a writ of certiorari, the Court noted that the primary purpose of the Act is, "to ensure that adverse effects upon the environment are fully considered and borne by those who caused them." Underlying the Act is a legislative policy of, "respond now, litigate later." The provisions of the Act call for quick, effective response action when environmental pollution has been detected." 159 Ill. 2d 381, 386, 1994 Ill. LEXIS 93, 6.

The National Marine Court ruled, "the potential release of hazardous waste into the environment is the very type of extraordinary or emergency situation which justifies a post/deprivation hearing. There is a strong public interest in protecting the public health and environment." Id.

(19) The case at bar concerns itself with not just a potential release, but the

actual release of nearly 10,000 gallons of petroleum into the environment over a very short period of time, in October, 2017.

(20) The National Marine Court also held that the Illinois Administrative Act governs actions brought pursuant to the Act.

> "Importantly, the legislature has provided that, where the Administrative Review Law has been expressly adopted by the statute creating the administrative agency, as in this case, (Illinois EPA), any other statutory, equitable, or common law mode of review of decisions of administrative agencies heretofore available shall not hereafter be employed." (Citations omitted) National Marine Inc. v. Illinois EPA,159 Ill. 2d 381,392, 1994 Ill. LEXIS 93,16,17.

A. UNDERGROUND STORAGE TANKS LAWS

(1) FEDERAL LAW

(21) The Federal EPA Underground Storage Tanks (hereafter "UST") laws, statutes, rules, requirements and/or regulations are found at 42 U.S.C. Section 6912, 6991(a)(b)(c)(d)(e)(f)(i)(k); and 40 CFR parts 280 and 281.

(22) The Federal UST Laws require state laws to have, "requirements for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injuries and property damage caused by sudden and non-sudden accidental releases arising from operating an underground storage tank." 42 USC Section 6991c(a)(6)

(23) Pursuant to 42 USC Section 6991b(a) State UST Programs must be, "no less stringent than the corresponding requirements, standards promulgated by the administrator."

(24) Federal Environmental Law also allows States:

> "to impose any additional liability with respect to the release of regulated substances within such state or political subdivisions." 42 USC Sec. 6991(g).

2. ILLINOIS LAW- LUST

(25) Title XVI of the Act, Petroleum Underground Storage Tanks, was enacted on September 13, 1993.

(26) Title XVI of the Act is known as the Leaking Underground Storage Tanks Program (LUST). (415 ILCS 5/57. 1-19)

(27) Illinois law can be no less stringent then Federal UST law. It may be more stringent. First of Am. Trust Co. v. Armstead, 171 Ill. 2d 282, 284, 285, 1996 Ill. LEXIS 32, 2 (1996).

(28) Actions brought pursuant to Title XVI, Petroleum Underground Storage Tanks, (LUST), are governed by 41 Illinois Administrative Code Sections 174, 175, 176, 177, and the Gasoline Storage Act, 430 ILCS 15/et seq.

(29) Counts I, II and III of Plaintiff's Amended Complaint at Law are provided by LUST.

(30) At all relevant times, Defendant's MPC and Speedway, pursuant to LUST, are owner/operators of the USTs at Gas Station #7445, while Defendant, Manoj Valiathara, is an operator pursuant to LUST.

(31) LUST 415 ILCS 5/57.2 provides the following definition:

> **"Bodily Injury,** means bodily injury, sickness, or disease sustained by a person, including death at any time, resulting from a release of petroleum from an underground storage tank."

(32) In the case at bar the legislature enacted a unique, and specific, definition for "bodily injury". This definition is found only in the Act.

(33) Given its plain and ordinary meaning Plaintiff fits squarely within the definition of "bodily injury," as provided in LUST.

(34) Generally, where a statute describes a requirement for a pleading, the pleader need allege and prove only what the statue requires to obtain the authorized relief. People ex. rel. Hartigan v. All American Aluminum and Construction Company, 171 Ill. App. 3d 27, 34, 1988 Ill. App. LEXIS 722, 10 (1st Dist. 1988) (collects cases.)

(35) To prevail on Counts I, II and III of her Amended Complaint Plaintiff will have to prove three propositions by a preponderance of the evidence: First, that the three Defendants, individually and collectively, pursuant to LUST, were owners and/or operators of the UST's at Gas Station #7445 on October 20, 2017; Second, that in October, 2017, there was a release of petroleum from an UST at Gas Station #7445; Third, that as a result of the petroleum release from the UST plaintiff suffered bodily injury. If Plaintiff can show these three (3) propositions, then the trier of fact/ jury is authorized to consider punitive damages pursuant to 415 ILCS 5/42(h)(4).

(36) These three propositions have been repeatedly proven, and can not be credibly disputed.

(37) A plain reading of Counts I, II and III of Plaintiffs Amended Complaint at Law, and the exhibits made part thereof, show multiple violations of LUST by each of the Defendants, to be considered by the jury in determining damages pursuant to the eight factors listed in 415 ILCS 5/42(h), including (h)(4).

(38) Events surrounding the release and subsequent damages are found in Plaintiff's Amended Complaint and attached exhibits, and the following depositions:

1. Ex. A, Scott Johnson of OSFM;

2. Ex. B, Deputy Chief Patrick Brenn of the Tri State Fire Protection District;
3. Ex. C, Larry Kauffman of the Westmont Fire Department;
4. Ex. D. Defendant, Manoj Valiathara; and
5. Ex. E Plaintiff Margaret Rice.

The depositions, which are made part of this Motion, all confirm the fact that each of the Defendants, pursuant to LUST, are strictly liable for the release of petroleum from Gas Station #7445 that caused Plaintiff's injuries.

B. STRICT LIABILITY

1. FEDERAL LAW - STRICT LIABILITY

(39) Violators of the Federal United States Environmental Protection Act are strictly liable for violations of the Federal Act. United States v. BMW Inv. Properties, 38 F. 3d 362, 367,1994 US App. LEXIS 29713, 14 (7th Cir. 1994) (Owners and/or operators are strictly liable for violations of Clean Air Act.) Accord, United States v. Capital Tax Corporation, 545 F. 3d 525, 2008 US App. LEXIS 20056 (7th Cir. 2008) (the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is a strict liability statute. Liability is imposed when a party is found to have a statutorily defined, "connection," with the facility; that connection makes the party responsible regardless of causation). See also, Illinois v. Grigoleit, 104 F. Supp. 2d 967, 977-979, 2000 U.S. Dist. LEXIS 10039, 27, 31-32 (collects cases).

(40) Illinois, through the Act, has adopted the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (hereinafter CERCLA). People v. N.L. Industries, 152 Ill. 2d 82, 92, 1992 LEXIS 191,11-12, (1992).

(41) "CERLCLA liability may be inferred from the totality of the circumstances;

it need not be proven by direct evidence." City of Gary v. Shafer, 683 F. Supp. 2d. 836, 853, 2010 U.S. Dist. LEXIS 12227, 40 (collects cases).

2. ILLINOIS LAW- STRICT LIABILITY UNDER LUST

(42) LUST, 415 ILCS 5/57.12(a)(1) states:

Underground storage tanks; enforcement; liability.

(a) Notwithstanding any other provision or rule of law, the owner or operator, or both, of an underground storage tank shall be liable for all costs of investigation, preventive action, corrective action and enforcement action incurred by the State of Illinois resulting from an underground storage tank. Nothing in this Section shall affect or modify in any way:

(1) The obligations or liability of any person under any other provision of this Act or State or federal law, including common law, for damages, injury or loss resulting from a release or substantial threat of a release as described above;

(43) LUST, 415 ILCS 5/57 12(g), states:

(g) The standard of liability under this Section is the standard of liability under Section 22.2(f) of this Act.

(44) 415 ILCS 22.2(f) of the Act, states:

(f) Notwithstanding any other provision 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 a release of a hazardous substance or pesticide:

(45) Pursuant to 5/57.12(g), LUST, by adopting 22.2(f) of the Act as the standard of liability for violators of LUST, all owners and/or operators of a UST who violate LUST are strictly liable for all damages incurred by members of the public, including plaintiff, who incur damages, injury and/or loss as a result of a violation of LUST.

(46) Pursuant to LUST, 415 ILCS 5/57.12(a) (1) and 5/57.12(g) and 5/22.2(f), of

the Act, MPC, SPEEDWAY, AND MANOJ VALIATHARA, as owners and/or operators under LUST, individually, and by and through their agents, managers, distributors, subsidiaries, employees, subcontractors, partnerships, and/or representatives, are strictly liable for any and all damages, injury, or loss sustained by Plaintiff, as a result of each Defendants violation(s) of LUST at Gas Station #7445 in October, 2017, as stated in Plaintiff's Amended Complaint Counts I, II, and III.

(47) 415 ILCS 5/22.2(f) is a strict liability statute. Central Illinois Light Company v. Home Insurance Company, 213 Ill. 2d 141, 173, 177, 2014 Ill. LEXIS 2033, 48, 49,50, 55 (2004) (Under 415 ILCS 5/22.2(f)(1) a former owner or operator will be held strictly liable for the release, or threat of release, of all hazardous substances). Accord, Northern Illinois Gas Company v. Home Insurance Company, 334 Ill. App. 3d 38, 48-49, 2002 Ill. App. LEXIS 784, 22,24 (1st Dist. 2002), (PLA denied, 2002 Ill. LEXIS 2162, 202 Ill. 2d 614 (2002)

(48) In People v. Fiorini, 143 Ill. 2d 318, 1991 Ill. LEXIS 39, (1991), the Court held that violations of the Act are malum prohibitum. No proof of guilty knowledge, or mens rea, is necessary for finding a violation of the Act. A Defendants' so called, "lack of knowledge," that a discharge existed, provides no defense. "Intent is not an element to be proved for a violation of the Act. The analysis applied by Courts in Illinois for determining whether an alleged polluter has violated the Act is whether the alleged polluter exercised sufficient control over the source of the pollution." "Willfulness and intent are not elements of a cause of action under the Act." Id. 143 Ill. 2d at 335, 336, 345, 346; 1991 Ill. LEXIS 39,17-18, 35,36.

(49) In. People et rel. Madigan v. Lincoln, Ltd., 2016 Ill. App. (1st) 143487, 2016

Ill. App. LEXIS, 879, (1st Dist. 2016), the Court noted the long established rule that the Plaintiff must show only that the alleged violator/polluter has the capability of control over the pollution or that the alleged violator/polluter was in control of the premises where the violation/pollution occurred.

> "It is irrelevant whether some of the individual property owners were familiar with the Act or had prior experience with the permitting process, because knowledge, awareness, or intent are not elements of a violation of the Act." 2016 Ill. App. (1st) 143487, P24, 2016 Ill. App. LEXIS, 879, 21-22, (1st Dist. 2016), (collects cases).

(50) Under both Federal and State law, Defendants can escape strict liability only under four circumstances. 415 ILCS 22.2(j)(1) states:

> "there should be no liability under this section for a person otherwise liable who can establish by a preponderance of the evidence that the release or substantial threat of release of a hazardous substance and the damages resulting therefrom were caused solely by:
>
> (A) An act of God;
>
> (B) An act of war;
>
> (C) An act or omission of a third party other than an employee or agent of the Defendant or other than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly with the Defendant;
>
> (D) Any combination of the foregoing paragraphs."

Accord, Illinois v. Griggoleit Co., 104 F. Supp. 2d 967, 979, 2000 U.S. Dist. LEXIS 10039, 32.

(51) None of the four exceptions to 22.2(f) strict liability apply to the case at bar. However, even assuming arguendo the release was caused solely by, for example, an act of war, 22(j)(5) states:

> "Nothing in this subsection (j) shall affect or modify in any way the obligations or liability of any person under any other provision of this Act or State or Federal Law, including common law, for damages, injury, or loss

resulting from a release or a substantial threat of a release of any hazardous substance."

C. PUNITIVE DAMAGES

1. FEDERAL LAW – PUNITIVE DAMAGES

(52) Whether Federal or Illinois Law, the dual purpose of Civil Penalties/ Damages, for violations of the Act is retribution and deterrence. The punishment for violators of the environmental laws is intended to be painful.

(53) In Tull v. United States, 481 US 412, 1987 US LEXIS 1928 (1987), the Court, in an action based on the Federal EPA Clean Water Act, discussed the civil penalties available under the Act and ruled, "the legislative history of the Act reveals that Congress wanted the district court to consider the need for retribution and deterrence, in addition to restitution, when it imposed civil penalties." 481 U.S. at 421, The Tull Court explained:

> "the more important characteristic of the remedy of civil penalties is that it exacts punishment - a kind of remedy available only in courts of law. Thus, the remedy of civil penalties is similar to the remedy of punitive damages, another legal remedy that is not a fixed fine." 481 U.S. at 421 (footnote 7) 1987 US LEXIS at 22.
>
> The Tull Court ruled:
>
> "A court can require retribution for wrongful conduct based on the seriousness of the violations, the number of prior violations, and the lack of good faith efforts to comply with the relevant requirements. It may also seek to deter future violations by basing the penalty on its economic impact. Subsection 1319(d)'s authorization of punishment to further retribution and deterrence clearly evidences that this subsection reflects more than a concern to provide equitable relief."

Tull v. United States, 481 US at 422, 423,1987 US LEXIS at 22.

2. ILLINOIS LAW – PUNITIVE DAMAGES

(54) Pursuant to Title XII. of the Act, **"Penalties"**, 415 ILCS 5/42 – 5/45; persons who violate the Act, including LUST, are subject to:

(1) 415 ILCS 5/42, Civil Penalties;

(2) 415 ILCS 5/43 (Substantial danger to environment or public health; sewage works contaminants) which authorizes immediate, ex parte injunctions;

(3) 415 ILCS 5/44, Criminal Acts; penalties;

(4) 415 ILCS 5/44.1 (Forfeiture of gains attributable to violations); and/or

(5) 415 ILCS 5/45 Injunctive and other Relief.

(55) All persons who violate Illinois Environmental laws are subject to the penalties/damages authorized under Title XII of the Act.

(56) Enforcing an Article XII Penalty provision, the Court, in People v. Staunton Landfill, Inc. 245 Ill. App. 3d 757, 1993 Ill. App. LEXIS 783, (4th Dist. 1993) stated the rule regarding the enforcement of penalties/ injunctions authorized under 5/42(e):

> "it is well settled that where a statute expressly authorizes injunctive relief to enforce its provisions, the general rules of equity which require a showing of irreparable injury and a lack of inadequate remedy at law need not be shown. The common law requirements for the issuance of equitable relief are suspended because the legislature has already determined, in passing the applicable statute, that violations of the statute cause irreparable injury for which no adequate remedy exists. When the statute authorizes such action, plaintiffs need only show a Defendant's violation of the Act and that plaintiffs have standing to pursue the cause." 245 Ill. App.3d 768, 1993 Ill. App. LEXIS 23

Accord, People v. Mika Timber Co., 221 Ill. App. 3d 192, 193, 1991 Ill. App. LEXIS 1935, (5th Dist. 1991); Environmental Protection Agency v. Fitz-Mar, Inc., 178 Ill. App. 3d 555, 561,1988 Ill. App. LEXIS 1831, 9-10, (1st Dist. 1988) ("no discretion is vested in the circuit court to refuse to issue an injunction to enforce the statute's terms.")

(57) From its inception in June, 1970 through January 1, 1991, when 415 ILCS

5/42(h) went into effect, Illinois courts had consistently held, "the Environmental Protection Act provides for both civil and criminal penalties. The criminal penalty is obviously intended to be punitive. The fact that the Act contains two separate provisions imposing sanctions indicates the intention of the legislature to prescribe civil sanctions for a different purpose. We have stated the: "legislative declaration of the purpose of the Act indicates that the principal reason for authorizing the imposition of civil penalties was to provide a method to aid the enforcement of the Act and that punitive considerations were secondary." Southern Illinois Asphalt Company v. Pollution Control Board, 60 Ill. 2d 204, 207, 1975 Ill. LEXIS 191,3 (1975).

(58) Thus, punishment/punitive damages considerations have always played a role when violations of the Act are shown.

(59) It has always been the legislatures' intent to punish those who violate the Act. By design of the legislature, "punitive considerations," have always been part of the Act's overall penalty scheme. See, People v. Fiorini, 143 Ill. 2d 318, 349, 1991 Ill. LEXIS 39, 42.

(60) In Lloyd A. Fry Roofing Company v. Pollution Control Board, 46 Ill. App. 3d 412, 1977 Ill. App. LEXIS 2269, (1st Dist. 1977) the Court, in an air pollution case, ruled:

> "The issue before this court still is what penalty could have properly been assessed in 1971." Regarding the law in effect at the time, the Lloyd court stated, "while the civil penalty is imposed not primarily for punitive considerations, but to aid in the enforcement of the Act, (citation omitted) this does not mean that a penalty can be imposed only to force the individual defendant to act. The assessment of penalties against recalcitrant defendants, who have not sought to comply with the Act voluntarily but who by their activities forced the Agency or private citizen to bring action against them may cause other violators to act promptly and not wait for the prodding of the Agency." Id, 46 Ill. App. 3d at 418-419, 1977 Ill. App. LEXIS 2269, 13-14, (1st Dist. 1977)

(61) In Environmental Protection Agency v. Fitz/Mar, Inc., 178 Ill. App. 3d 555, 1988 Ill. App. LEXIS 1831 (1st Dist. 1988) defendant, a landfill operator, sought review of an Order from the Circuit Court of Cook County which had granted the IEPA's motion for a preliminary injunction, prohibiting Defendant from dumping refuse in violation of the Act.

Defendant in Fitz/Mar insisted that the trial court had abused its discretion and that the State had exceeded the Act's authority by enjoining defendant from operating its business for a "technical" violation of the Act. Defendant also argued the trial court had imposed a disproportionate and punitive penalty, and thus had committed reversible error by abusing it's discretion.

The Fitz/Mar Court, in upholding the trial court's ruling, noted the trial court, in fact, really had no discretion to exercise when interpreting section 5/42(e), of the Act. Instead, unlike the common law rules, a court must:

> "Under this section, a claim for injunctive relief is not governed by general equitable principals or the rules of common law nuisance. When, as here, the statute authorizes such an action, Plaintiffs need only show defendants violation of the Act, and that Plaintiffs have standing to pursue the cause. No discretion is vested in the Circuit Court to refuse to issue an injunction to enforce the statute's terms." Fitz/Mar 178 Ill. App. 3d at 560, 1988 Ill. App. LEXIS 183, 9-10 (1st Dist. 1988)

(62) Under LUST, and 5/42(a) of the Act, Plaintiff's remedies and damages for each defendant's violations of LUST are determined by the eight factors in 415 ILCS 5/42(h), including 42(h)(4).

(63) Pursuant to 415 ILCS 5/42(h), in assessing plaintiff's damages under the

Act for defendant's violations of LUST, the trier of fact, does, and, "is authorized to consider any matters of record in mitigation or aggravation of penalty, including, but not limited to, the following factors:

> (1) the duration and gravity of the violation;
>
> (2) the presence or absence of due diligence on the part of the defendant in attempting to comply with requirements of this Act and the regulations thereunder or to secure relief therefrom as provided by this Act;
>
> (3) any economic benefits accrued by defendant because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
>
> **(4) the amount of monetary penalty which will serve to deter further violations by the defendant and to otherwise aid in enhancing voluntary compliance with this Act by the defendant and other persons similarly subject to the Act; (emphasis supplied)**
>
> (5) the number, proximity in time, and gravity of previously adjudicated violations of this Act by the defendant;
>
> (6) whether the defendant voluntarily self-disclosed, in accordance with subsection (i) of this Section, the noncompliance to the Agency;
>
> (7) whether the defendant has agreed to undertake a "supplemental environmental project", which means an environmentally beneficial project that a defendant agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform; and
>
> (8) whether a defendant has successfully completed a Compliance Commitment Agreement under subsection (a) of Section 31 of this Act to remedy the violations that are the subject of the complaint. 415 ILCS 5/42(h)

(64) 415 ILCS 5/42(h) was enacted by the legislature on September 7,1990, effective January 1, 1991.

(65) 42 (h)(4) mimics the purpose/reason for punitive damages in a common law

strict liability or negligence case. Clearly, the legislature intended, by enacting 42(h)(4), that punitive damages be considered for violations of the Act, including the LUST violations found in Counts I, II, and III of Plaintiff's Amended Complaint.

(66) The Court, in the seminal case of ESG Watts v. Pollution Control Board, 282 Ill. App 3d 43, 52, 1996 Ill. App. LEXIS 608, 17-18 (4th Dist. 1996) explained the legislature's intent in enacting 415 ILCS 5/42(h) to Title XII of the Act. The ESG Court ruled:

> "Illinois Courts often state that the primary purpose of civil penalties is to aid in enforcement of the Act, and punitive considerations are secondary. (citations omitted) Some decisions which predate Section 42(h) seem to suggest that whenever compliance has been achieved, punishment is unnecessary. (citations omitted) However, it is now clear from the Section 42(h) factors that the deterrent effect of penalties on the violator and potential violators is a legitimate goal for the Board to consider when imposing penalties." ESG Watts v. Pollution Control Board, 282 Ill. App 3d 43, 52, 1996 Ill. App. LEXIS 608, 17-18 (4th Dist. 1996)

(67) As stated in Counts I, II and III of Plaintiff's Amended Complaint, the 42(h) damages factors apply to each of the Defendants for their various and multiple violations of LUST.

(68) In the case at bar Plaintiff, being a person under the Act, and suffering a "bodily injury", as defined under LUST, is entitled, pursuant to the Act, to have the trier of fact consider the 5/42(h) factors, including (h)(4), when they assess Plaintiff's damages.

(69) The legislature, in enacting a separate, unique definition of "bodily injury", clearly meant to protect Plaintiff under LUST. The legislature was explicit in protecting potential victims such as Plaintiff from injury due to the release of petroleum from a UST. No other meaning is possible from a plain reading of the definition of "bodily injury" under LUST.

(70) The Legislative intent, and law itself, is clear that a violation of LUST that leads to bodily injury requires punitive damages to be considered under 42(h)(4).

(71) In, People ex. rel. Ryan v. McHenry Shores Water Company, 295 Ill. App. 3d 628, 1998 Ill. App. LEXIS 184, (2nd Dist. 1998), Defendant complained, "that the civil penalties assessed against them were excessive and punitive, and not an aid to enforcement of the Act." Defendants further claimed, "that this amount represents 33% of it's gross revenues, and that the penalties imposed could lead to the filing for bankruptcy." Affirming the trial courts' imposition of damages, the Court noted, "A review of the record in the instant case reveals that the trial court considered the factors set forth in Section 42(h)." The trial court specifically cited the first four 42(h) factors as the bases for its decision as to the final penalty amount. The McHenry Shores court emphasized the importance of the fourth factor concerning, "the need to deter further violations by the violator and to otherwise aid in enhancing voluntary compliance with the Act by the violator and others." 295 Ill. App. 3d at 637-638, 1998 Ill. App. LEXIS 184, 19-22, (2nd Dist. 1998).

(72) In People ex. rel. Madigan v. J.T. Einodor, Inc., 2013 Ill. App. (1st) 113498, 2013 Ill. App. LEXIS 864, (1st Dist. 2013), (affirmed in part, reversed in part, on unrelated grounds, 2015 Ill. 117193, 2015 Ill. LEXIS 324, (2015)) the IEPA had sought $5 million dollars in penalties against a waste disposal site operator for permit violations. Defendants ultimately were assessed penalties totaling $1,327,300.00. The damages were reached after considering the 42(h) factors, including the fourth factor, the monetary penalty that would deter the Defendant from committing future violations

and would aid in enhancing voluntary compliance by those similarly situated as Defendant. The Einodor Appellate court held:

> "There is no requirement under the Act that penalties imposed bear a mathematical relationship to the net profits realized by virtue of the violations charged. Indeed, this approach could encourage potential violators to simply factor in the estimated penalty to the cost of doing business, thus defeating the dual purpose of the imposition of penalties, which is to punish violators and discourage other similarly situated parties from engaging in prohibited conduct. If defendants wanted the trial court to consider evidence that net profits were substantially less than the reasonable estimate of gross profits provided by the State, nothing precluded defendants from presenting that evidence, which was readily available to them."
>
> "Importantly, economic benefit is only one of many factors a trier of fact may look to when imposing fines. The other considerations, such as deterrence, self-disclosure of violations, and the duration of violations, do not have an easily calculable monetary value. The trial court could properly have reasoned that defendants' continued the operations for five years after receiving violation notices from the Agency necessitated particularly severe penalties in order to deter future violators from engaging in similar conduct." 2013 IL App (1st) at P74,P76, 2013 Ill. App. LEXIS 864, 41-42.

II. STATUTORY CONSTRUCTION

(73) In interpreting a statute, "we turn, first, to the statutory language itself, as the clear language of the statute is the best indicator of legislative intent." People v. N.L Industries, 152 Ill. 2d 82, 97,1992 Ill. LEXIS 191, 20 (1992)

(74) "Statutes must be read as a whole; all relevant parts of the statute must be considered when courts attempt to define the legislative intent underlying the statute." Id. 152 Ill 2d at 98, 1992 Ill. LEXIS 191, 21.

(75) Unambiguous terms, when not specifically defined, must be given their plain and ordinary meaning. Courts will avoid a construction of a statute which will render any portion of it meaningless or void. The court's presume that the General Assembly, in passing legislation, did not intend absurd consequences, inconvenience, or injustice. It is unnecessary to seek guidance from legislative history where a statute is clear. Id. 152

Ill. 2d at 99, 1992 Ill. LEXIS 191, 23, Accord, Harris v. Manor Health Care Corporation, 111 Ill. 2d 350, 362-363; 1986 Ill. LEXIS 205, 12-13; Hernon v. E.W. Corrigan Construction Company, 149 Ill. 2d 190, 194-195, 1992 Ill. LEXIS 98, 5-6 (1992)

(76) Though not an environmental case, the case of Crowley v. Watson, 2016 Ill. App. (1st) 142847, 2016 Ill. App. LEXIS 99, (1st Dist. 2016) is instructive. In Crowley, Plaintiff brought a claim for retaliatory discharge pursuant to the Illinois Ethics Act, 5 ILCS 430/15-10 (2008). He sought punitive damages for his claim. The Crowley court stated, "Section 15/25 of the Ethics Act says, "a State employee may be awarded **all remedies necessary** to make the State employee whole and **to prevent future violations** of this article." (emphasis supplied by the Court) 2016 Ill. App. (1st) 142847, P45, 2016 Ill. App. LEXIS 99, 25 (1st Dist. 2016) The Crowley court held, "the plain language of the statute tracks the very purpose of punitive damages and provides a broad list of remedies absent limiting language and thus permits such damages to deter further Ethics Act violations." (citations omitted) 2016 Ill. App. (1st) P46, LEXIS 25,26 "Given the clear language of the Ethics Act providing for remedies to deter future violations..., we conclude the award of punitive damages against defendants in this case was statutorily permissible. Our interpretation of the statute, moreover, is consistent with the policy and purpose of the Ethics Act and consistent with analogous Supreme Court Case Law." 2016 Ill. App. (1st) P49, 2016 Ill. App. LEXIS 99, 28-29 (Citing, Kelsay v. Motorola, Inc., 74 Ill. 2d 172, 384 N.E. 2d 353, (1978)

(77) The Crowley court further ruled, "we find Maes v. Folberg, 531 F. Supp. 2d 956 (N.D. Ill. 2007), instructive. There, the Federal District Court interpreted the Ethics Act to include punitive damages as a remedy, specifically stating that, "the legislature

envisioned the recovery of punitive damages," by the inclusion of the language regarding the prevention of future violations of the Ethics Act." Crowley v. Watson, 2016 Ill. App. (1st) 142847, P46, 2016 Ill. App. LEXIS 99, 26(1st Dist. 2016)

(78) The plain language of 415 ILCS 5/42(h)(4) evidences the legislature's strong, explicit intent to authorize punitive considerations/damages for violations of the Act.

(79) Plaintiff, in her Amended Compliant, has shown various multiple violations of LUST by each of the Defendant's MPC, SPEEDWAY and MANOJ VIALIATHARA. By operation of law, under Title XII of the Act, 415 ILCS 5/42(h) determines what factors the trier of fact is authorized to consider in assessing her damages in Counts I, II, and III.

(80) As intended, the law is clear and simple to follow. Pursuant to the Act, the jury is authorized to consider the 5/42(h) factors when deciding Plaintiff's damages due to each Defendant's LUST violations.

III. SURVIVAL OF PUNITIVE DAMAGES

(81) In National Bank of Bloomington v. Norfolk & Western Railway Co., 73 Ill. 2d 160, 1978 Ill. LEXIS 352, (1978), the Court, interpreting the Public Utilities Act, which allowed for punitive damages ruled:

> "Here, in contrast to Mattyasovszky, punitive recovery was sought not under the common law, but directly under the Public Utilities Act, which expressly provides, that, "If the court shall find that the act or omission was willful, the Court may in addition to the actual damages, award damages for the sake of example and by way of punishment."" (Citation omitted).
>
> "The Survival Act itself neither authorizes nor prohibits punitive damages. It is merely the vehicle by which the cause of action, created by the Public Utilities Act, survives the death of the injured person when the action would have otherwise have abated at common law. Unquestionably, the Public

> Utilities Act intends to punish an offender and discourage similar offenses by allowing punitive damages to be awarded whenever an injury results from a Defendant's wrongful and willful statutory violation. **It would pervert the Act's intention as reprehensible conduct, so severe in consequence that result in injury, culminating in death, was to be insulated from punitive liability under the very Act designed to vigilantly promote safety by Public Utilities. Punitive damages for injuries prior to death should be unaffected by the subsequent death of the injured person, for punitive recovery addresses only the nature and gravity of a defendant's wrongful and willful act. Under the Act, Defendant's punitive liability accrued from the moment decedent sustained personal injury and upon decedent's death, his right to recovery passed unabated to his estate.** Only in this manner can we observe the dictates of Murphy and provide for "a full liability and full recovery for damages up to the time of death." 73 Ill. 2d at 173-174 (emphasis added). Accord, Winter v. Schneider Tank Lines, 107 Ill. App. 3d 767, 770-771, 1982 Ill. App. LEXIS 2053, 8-10 (1st. Dist. 1982).

(82) In the case at bar, pursuant to National Bank of Bloomington v. Norfolk Western Railway Co., Plaintiff's decedent's estate is entitled to have punitive damages be considered by the trier of fact as they passed unabated to Plaintiff's decedent estate upon Plaintiff's death.

(83) To insulate any of the three defendants from punitive liability for their violations of LUST would obviously not only obviate the very terms of LUST, but the strong public policy behind it.

(84) If the jury did not consider the 42(h) factors, considering the facts in the case at bar, it would not only defeat and pervert the entire purpose of Title XII, Penalties and Title XVI LUST, but the legislative intent behind the entire Act.

(85) Unlike The Public Utility Act in National Bank, violations of the Act do not require a finding of "wrongful" or "willful" conduct. Also, the Public Utilities Act, unlike the Act, allows the trial Court discretion to act as a gate keeper and must find that an act or omission was "willful" before allowing damages for, "the sake of example or by way of

punishment." Under the Act and LUST, there is no similar requirement for the trial Court to make a finding of a willful violation of an act or omission, as violations of the Act are malum prohibitum, resulting in strict liability, for all damages, injury, and loss, including punitive damage considerations, under 415 ILCS 5/42(h)(4), when bodily injuries result from a violation of LUST.

(86) There are no penalties in the Public Utility Act such as those found in Article XII of the Act, which have always been part of the overall statutory scheme of the Act.

(87) Courts must avoid a construction of a statute which would render any portion of it meaningless or void. Further, it is a basic rule of statutory construction that, "where there are two statutory provisions, one of which is general and designed to apply to cases generally, and the other is particular and relates to only one subject, the particular provision must prevail," Hernon v. E.W. Corrigan Construction Company, 149 Ill. 2d 190, 194,195, 1992 Ill. LEXIS 98, 5-6 (1992) (collects cases).

(88) The particular, "bodily injury" definition created by LUST is unique to Plaintiff, and the Act, who suffered her injuries due to violations of LUST. Thus, any claimed defense based upon the common law survival statute, or any common law principles, cannot defeat Plaintiff's remedy of punitive damages as to Counts I, II, III of her Amended Complaint, despite her passing away. Further, nowhere in Title XII, Penalties, 415 ILCS 5/42, or LUST, are Plaintiff's claims for punitive damages limited due to her death.

(89) In Froud v. Celotex, Corp., 98 Ill. 2d 324, 1983 Ill. LEXIS 476,(1983) the Court, again, ruled that:

> "where the legislature specifically provides for recovery of exemplary damages as part of a comprehensive regulatory scheme, the intention of

> the legislature is that a claim for a punitive award should be litigated regardless of whether the injured person continues to live. That claim is an integral component of the regulatory scheme and of the remedies that are available under it. It can no more be diminished by common law doctrines, such as abatement, than a statutory limitations period can be eroded by such equitable doctrines as tolling. The (Public Utilities) Act provides for survival of the actions which it authorizes. There is, "a distinction between punitive awards based on the Common Law and those based on a statute." 98 Ill. 2d at 332-333, 1983 Ill. LEXIS 476, 11-12 (1983)

(90) In Raisl v. Elwood Industries, Inc., 134 Ill. App. 3d 170, 172-173, 1985 Ill. App. LEXIS 2090, 6, 11 (1st Dist. 1985) the Court ruled that an action for retaliatory discharge predicated upon the Worker's Compensation Act, and seeking punitive damages, survived the death of the discharged employee. The Raisl Court reasoned that the significant role of punitive damages provided a strong, equitable consideration which warranted holding that punitive damage claims survive the death of the decedent. See also, Howe v. Clark Equipment Co., 104 Ill. App. 3d 45, 1982 Ill. App. LEXIS 1449 (4th Dist. 1982). (Plaintiff decedents' claim for punitive damages survived his death in his common law strict liability claim).

(91) In the case at bar the Act has an entire article, Article XII, devoted to civil penalties, injunctions and criminal penalties for violations of the Act. No other statutory scheme in Illinois is designed like the Act.

(92) Finally, in addition to the legislature creating and defining an explicit cause of action for Plaintiff under LUST, the legislature also enacted a statute based on the severity of the burn's Plaintiff's decedent sustained on October 20, 2017, as a result of the release. **The Burn Injury Reporting Act, 425 ILCS 7/5** states as follows:

Burn Injury Reporting.

> "(a) every case of a burn injury treated in a hospital as described in this Act may be reported to the Office of the State Fire Marshal. The hospitals

> administrator or his designee deciding to report under this Act shall make an oral report of every burn injury in a timely manner as soon as treatment permits, that meets one of the following criteria: 1) a person receives a serious second degree burn or a third degree burn, but not a radiation burn, to 10% or more of the person's body as a whole."

(93) In the present case Plaintiff sustained serious second degree burns to over 10% of her body as a whole. See, Plaintiff's Ex. #23, November 7, 2017, medical report of Thomas Vizinas, D.O.; Ex. # 24, fourteen (14) photos of Plaintiff. Due to their severity, the legislature has shown an interest in the particular burns Plaintiff sustained as a result of the petroleum release from Gas Station #7445, in October, 2017.

(94) Plaintiff's claim for statutory punitive damages under the Act survive her death by operation of law.

IV. Public Policy

(95) The Illinois Environmental Protection Act was borne as a result of Article XI of the Illinois Constitution, which states; Article XI, ENVIRONMENT:

> **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.
> (Source: Illinois Constitution.)
>
> **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. (Source: Illinois Constitution.)

(96) Under Article XI every Illinois citizen has a vested, inherent, constitutional

right to a clean and healthful environment. Meadowlark Farms, Inc. v. Illinois Pollution Control Board, 17 Ill. App. 3d 851, 308 N.E. 2d 829, 1974 Ill. App. LEXIS 3074 (5th Dist. 1974)

(97) The Act's legislative intent, and public policy, is found at 415 ILCS 5/2:

"[Legislative Finding; purpose; construction]"

(a) The General Assembly finds:

(i) that environmental damage seriously endangers the public health and welfare, as more specifically described in later sections of this Act;

(ii) that because environmental damage does not respect political boundaries, it is necessary to establish a unified state-wide program for environmental protection and to cooperate fully with other States and with the United States in protecting the environment;

(iii) that air, water, and other resource pollution, public water supply, solid waste disposal, noise, and other environmental problems are closely interrelated and must be dealt with as a unified whole in order to safeguard the environment;

(iv) that it is the obligation of the State Government to manage its own activities so as to minimize environmental damage; to encourage and assist local governments to adopt and implement environmental-protection programs consistent with this Act; to promote the development of technology for environmental protection and conservation of natural resources; and in appropriate cases to afford financial assistance in preventing environmental damage;

(v) that in order to alleviate the burden on enforcement agencies, to assure that all interests are given a full hearing, and to increase public participation in the task of protecting the environment, private as well as governmental remedies must be provided;

(vi) that despite the existing laws and regulations concerning environmental damage there exist continuing destruction and damage to the environment and harm to the public health, safety and welfare of the people of this State, and that among the most significant sources of this destruction, damage, and harm are the improper and unsafe transportation, treatment, storage, disposal, and dumping of hazardous wastes;

(vii) that it is necessary to supplement and strengthen existing criminal sanctions regarding environmental damage, by enacting specific penalties for injury to public health and welfare and the environment.

(b) It is the purpose of this Act, as more specifically described in later sections, 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.

(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, but to the extent that this Act prescribes criminal penalties, it shall be construed in accordance with the Criminal Code of 2012 [720 ILCS 5/1-1 et seq.].

(98) The specific policy and purpose behind the civil penalties/damages for violations of the Act is found in the **IEPA Compliance & Enforcement** statement:

> "The Illinois EPA's enforcement program **seeks to obtain prompt compliance** with the Illinois Environmental Protection Act and regulations promulgated thereunder, **pose a deterrent to actions that delay or prevent prompt compliance, provide an incentive for timely and responsible compliance behavior**, and ensure that persons who comply with environmental requirements are not placed at a competitive disadvantage.
>
> **To successfully implement its programs**, the Illinois EPA uses compliance assistance and education, compliance inspections and reviews, and finally enforcement. Each is needed, and each complements the others. **We all recognize that most regulated entities comply voluntarily. Others may not comply, because of a lack of information, or through negligence, or actual intent to avoid the requirements and costs that may go with them. Deterrence can only be had if the enforcement option is always available, and is pursued timely and consistently. If not timely, deterrence will be diminished by the distance in time between the violation and the pain of the penalty.** If not consistently applied, fairness is lacking and competitive disadvantages may result."

(99) To not allow Plaintiff's Motion for Punitive Damages by Operation of Law as to Counts I, II, III, would violate not only the Act but the Illinois public policy and purpose behind the punishment for violators of our environmental laws. The violations shown in

Plaintiff's Amended Complaint at Law Counts I, II and III, and exhibits made part thereto, cry out for retribution and deterrence be exacted from Defendants to satisfy the Act's laws and purpose.

(100) Based on the facts in the present case the punishment for each Defendant must be painful, as that is what the Act requires.

(101) The Act, and applicable, controlling Federal and Illinois case law make this case simple. The Plaintiff only needs prove a release of petroleum from Gas Station #7445 USTs, owned and/or operated by each of the defendants, caused her injuries and burns. Each of the defendants are then strictly liable for Plaintiff's damages, assessed pursuant to 415 ILCS 42(h). It is that simple by design.

Wherefore, pursuant to the Act generally and LUST specifically, applicable Federal and Illinois Case Law, and Public Policy, as stated in this motion, Plaintiff respectfully requests this Honorable Court enter an Order granting her Motion for Punitive Damages by Operation of Law as to Counts I, II and III of her Amended Complaint at Law.

Respectfully Submitted,

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

LAURA E. RICE, Special Representative for MARGARET L. RICE, Deceased,
Plaintiff,
v.

SPEEDWAY LLC, *et al.*,
Defendants/Third-Party Plaintiffs.
v.

FLAGG CREEK WATER RECLAMATION DISTRICT, *et al.*,
Third-Party Defendants.

No. 2018-L-000783
Consolidated with:
No. 2018-L-010930

EVA PATTERSON AND DAN PATTERSON,
Plaintiffs,
v.

SPEEDWAY LLC, *et al.*,
Defendants/Third-Party Plaintiffs,
v.

FLAGG CREEK WATER RECLAMATION DISTRICT, *et al.*,
Third-Party Defendants.

DEFENDANTS' MOTION TO DISMISS COUNTS I, II AND III OF PLAINTIFF'S FIRST AMENDED COMPLAINT

Defendant, SPEEDWAY LLC ("Speedway"), MARATHON PETROLEUM CORPORATION ("MPC"), and MANOJ VALIATHARA ("Valiathara") (collectively named hereinafter "Defendants"), by and through their attorneys, LITCHFIELD CAVO LLP, and pursuant to 735 ILCS 5/2-619.1 moves this Court to dismiss Counts I, II and III of Plaintiff Margaret Rice's First Amended Complaint in the event the Court denies Defendants' 735 ILCS 5/2-615 Motion to Dismiss the entire complaint. Defendants 2-615 Motion has been filed and this motion is would be moot if the Court grants that motion. In support of this Motion to dismiss Counts I-III, Defendants state as follow:

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I. INTRODUCTION

Margaret Rice filed her Complaint at Law on January 23, 2018 asserting allegations sounding in negligence. *See* Plaintiff's Complaint. Approximately two months after Margaret Rice, passed away in November of 2019, Laura Rice ("Plaintiff") was appointed "Special Representative" for Margaret Rice on January 17, 2020.[1]

Over three years after her initial Complaint was filed, Plaintiff filed her First Amended Complaint at Law on March 25, 2021, for the first time asserting a claim under Strict Liability for "Violation of Illinois Environmental Protection Act: Bodily Injury Resulting from Release of Petroleum from Underground Storage Tank" against each defendant. *See* Counts I-III of Plaintiff's First Amended Complaint (hereinafter collectively "EPA Counts"). In each EPA Count, which are all substantively identical, Plaintiff claims that Defendants violated specific provisions of the Illinois Environmental Protection Act (the "Act") and Chapter 41 of the Illinois Administrative Code and is therefore entitled to penalties and fines for those alleged violations. The EPA Counts are purportedly brought pursuant to the Illinois Survival Act. However, the Survival Act does not create a statutory cause of action and instead allows a representative of the decedent to maintain those statutory or common-law actions that had already accrued to the decedent prior to the decedent's death. *Froud v. Celotex Corp.*, 456 N.E.2d 131, 133 (Ill. 1983), *see also*, *Myers v. Heritage Enterprises, Inc.*, 332 Ill. App. 3d 514, 517 (4th Dist. 2002).

Moreover, the violations alleged in Counts I-III of the First Amended Complaint were previously adjudicated and wholly duplicative of the action filed by the Illinois Attorney General and DuPage State's Attorney on November 3, 2017. *See*, **Plaintiff's Exhibit 35**, *People v.*

[1] Defendants' companion Motion to Dismiss the entire complaint challenges the validity of the appointment of Laura Rice as the Special Representative based on serious and fatal defects in Plaintiff's Motion to Spread The Record of Death and To Appoint a Special Representative. Defendants will be presenting the companion Motion first.

Speedway, DuPage County, 2017 CH 1505 (attached hereto as **Exhibit A**). The government's action, which was filed on November 3, 2017, less than one month after the Office of the State Fire Marshall (OSFM) investigated the gasoline release on October 20, 2017 and alleged violations of the Act and Illinois Administrative Code, including Substantial Danger to the Environment, Public Health and Welfare of Persons in violations of Section 43(a) of the Act, 415 ILCS 5/43(a) (2016), Air Pollution in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2016), Water Pollution in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2016), and Creating a Water Pollution Hazard in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2016). *Id.* Like Rice's EPA Counts, the State of Illinois sought damages pursuant to 415 ILCS 5/42 *et seq.* and 415 ILCS 5/43 (2016), including civil penalties provided under 415 ILCS 5/42(a) and injunctive relief pursuant to 415 ILCS 5/43(a). *Id.* The State and Speedway entered an Agreed Immediate and Preliminary Injunction Order on November 13, 2017, which ordered Defendant to continue to cease dispensing and delivering gasoline into the underground storage tanks at the Site, as well as many other "immediate action" items specified therein. *See*, **Exhibit B**, *Agreed Immediate and Preliminary Injunction Order* dated November 13, 2017.

On December 4, 2018 – more than a year after suit was filed – the Attorney General, DuPage County State's Attorney and Defendant reached a settlement and a Consent Order was entered as the final judgment on the merits of the State's 2017 action. *See*, **Exhibit C**, *2017 CH 1505 Consent Order*. Pursuant to the 2018 Order, Defendant was ordered to pay a civil penalty of Seventy-Five Thousand Dollars ($75,000) payable to the Illinois Environmental Protection Agency ("Illinois EPA") for deposit into the Environmental Protection Trust Fund ("EPTF"). The Consent Order further provided that if Defendant failed to comply with any response or reporting requirement by the date specified in the Order, the Defendant "shall provide notice to the Plaintiff

of each failure to comply" and "shall pay stipulated penalties in the amount of $400.00 per day per violation for up to the first fifteen (15) days of violation, and $1,000.00 per fay per violation thereafter until such time that compliance is achieved." **Ex. C**, pp. 5-6. The order further provides that, pursuant to Section 42(g) of the Act, "interest shall accrue on any penalty amount owed by the Defendant not paid within the time prescribed," beginning to accrue from the date such are due and continue to accrue to the date full payment is received. ***Id.*** at p. 6.

In addition to satisfying the stipulated provisions of the Order regarding penalties, Defendant submitted a Corrective Action Plan ("CAP") with a proposed schedule to the Illinois EPA. The CAP was reviewed and conditionally approved on January 14, 2019, as well as an Amended CAP which reflected the Illinois EPA's requested modifications. **Ex. C**, pp. 7-8. Defendant also continued investigation of on- and off-site soils, surface water and ground water impacts that may have been caused by the leaking underground storage tanks ("LUST"), and performed appropriate remedial actions pursuant to the "Board UST Regulations, 35 Ill. Adm. Code Part 734" or as requested by the Illinois EPA. ***Id.*** at p. 8; *see also*, **Exhibit D**, *NFR Inspection Evaluation Document* dated November 7, 2019.

In the EPA Counts, Plaintiff attempts to bypass the administrative procedure, jump directly into the shoes of the Illinois Attorney General, and attempt to manufacture a personal monetary benefit by seeking statutory penalties. The EPA Counts seek statutory penalties for the three year period since the alleged violations occurred. Plaintiff lacks the standing to bring an action for private remedies under the Act. Moreover, the only provision providing an avenue for an individual to sue for a private remedy under the Act limits this remedy to injunctive relief against the alleged violations, which is moot as these violations have already been adjudicated and Speedway has already remedied the condition. (415 ILCS 5/45(b)); *See also*, **Ex. B** and **Ex. C**.

Furthermore, Plaintiff would not even be able to recover the monetary civil penalties through the statutory cause of action Plaintiff asserts in the EPA Counts. Any monetary penalties for Defendants' alleged violations recoverable under the Act would be – and were – paid to the Illinois EPA and/or deposited into the state environmental funds (*i.e.*, Environmental Protection Trust Fund). *Id.*

Therefore, Counts I-III of Plaintiff's First Amended Complaint must be dismissed pursuant to 735 ILCS 5/2-615 for failure to state a claim and 735 ILCS 5/2-619(a)(3) as they are wholly duplicative of the 2017 Chancery action filed by the Illinois Attorney General and DuPage County State's Attorney and because Plaintiff lacks standing to assert those claims.

II. STANDARD

Section 2-619.1 of the Illinois Code of Civil Procedure allows a party to move for dismissal under both Sections 2-615 and 2-619. 735 ILCS 5/2-619.1 (West 2016). "A Section 2-615 motion attacks the legal sufficiency of the plaintiff's claims, while a Section 2-619 motion admits the legal sufficiency of the claims but raises defects, defenses, or other affirmative matter, appearing on the face of the complaint or established by external submissions, that defeats the action." *Garlick v. Bloomingdale Township*, 2018 IL App. (2d) 171013, ¶ 24, citing *Aurelius v. State Farm Fire & Casualty Co.*, 384 Ill. App. 3d 969, 972-73 (2008). Mootness is a matter properly raised under Section 2-619. *Garlick*, 2018 IL App. (2d) 171013, ¶ 24, citing *Hanna v. City of Chicago*, 382 Ill. App. 3d 672, 676-77 (2008).

III. ARGUMENT

A. The EPA Counts Must Be Dismissed Pursuant to 735 ILCS 5/2-619(a)(3) Because They Are Duplicative Of The Attorney General's And State's Attorney's Case.

As explained above, Plaintiff has failed to state a cause of action upon which relief can be granted in the EPA Counts based upon the statutory language of the Illinois Environmental

Protection act and Illinois Administrative Code, and Illinois courts' refusal to read an imposition of strict liability into the language of the Act. Moreover, Counts I-III must be dismissed as they are wholly duplicative of the allegations adjudicated in *People v. Speedway*, DuPage County, 2017 CH 1505.

Section 2–619(a)(3) is designed to avoid duplicative litigation and is to be applied to carry out that purpose. *Schacht v. Lome, M.D.*, 2016 IL App (1st) 141931 at ¶ 34; *see also Overnite Transportation Company v. International Brotherhood of Teamsters, et al.*, 332 Ill.App.3d 69, 73 (1st Dist. 2002), *citing Kellerman v. MCI Telecommunications Corp.*, 112 Ill.2d 428, 447 (1986). Under section 2–619(a)(3) of the Code, a defendant may seek dismissal of an action on the grounds "[t]hat there is another action pending between the same parties for the same cause." 735 ILCS 5/2–619(a)(3) (West 2016). Pursuant to section 2–619(a)(3), the defendant may move for a dismissal or stay of the action. *Overnite Trans. Co.*, 332 Ill.App.3d at 73. The movant has the burden to demonstrate through clear and convincing evidence that the two actions involve both the same parties and the same cause. *Hapag–Lloyd (America), Inc. v. Home Insurance Co.*, 312 Ill.App.3d 1087, 1091 (2000). Unlike motions under other subsections of section 2-619, the decision to grant or deny a section 2–619(a)(3) motion is within the trial court's discretion. *Gorman-Dahm v. BMO Harris Bank, N.A.*, 2018 IL App (2) 170082 at ¶ 42, citing *Combined Insurance Co. of America v. Certain Underwriters at Lloyd's, London*, 356 Ill. App. 3d 749, 754 (2005).

Three factors should be considered when deciding a motion to dismiss under section 2-619(a)(3): comity[2], the prevention of multiplicity, vexation and harassment, and the likelihood of

[2] Illinois courts have defined "comity" as "giving respect to the laws and judicial decisions of other jurisdictions out of deference." *Overnite Trans. Co.*, 332 Ill.App.3d at 76, citing *Hapag–Lloyd*, 312 Ill.App.3d at 1096. Since the inquiry does not focus on whether the causes of action are identical, if the two actions arose out of the same occurrence,

obtaining complete relief in the foreign jurisdiction. *Overnite Trans. Co.*, 332 Ill.App.3d at 76, citing *Kellerman*, 112 Ill. 2d at 447-48; *see Kapoor v. Fujisawa Pharmaceutical Co.*, 298 Ill.App.3d 780, 789 (1998) (*res judicata* not a relevant consideration in the context of dismissal, as opposed to a stay, since after a dismissal, there is no remaining action to which *res judicata* principles can be applied).

In evaluating whether two actions are for the same cause, a crucial inquiry is "whether the two actions arise out of the same transaction or occurrence, not whether the legal theory, issues, burden of proof or relief sought materially differ between the two actions." *Kapoor*, 298 Ill.App.3d at 786, citing *Terracom Development Group v. Village of Westhaven*, 209 Ill.App.3d 758, 762, (1991). "Neither the parties nor the cause need be identical to the prior pending suit." *Kapoor*, 298 Ill.App.3d at 786, quoting *Forsberg v. City of Chicago*, 151 Ill.App.3d 354, 372 (1987). Section 2–619(a)(3) refers to the "same cause," not to the "same cause of action," and it may be invoked "where there is a substantial similarity of issues" between the two actions. *Kapoor*, 298 Ill.App.3d at 786, quoting *Bank of Northern Illinois v. Nugent*, 223 Ill.App.3d 1 (1991); *Tambone v. Simpson*, 91 Ill.App.3d 865, 867 (1980). The central inquiry, then, is whether the relief requested rests on substantially the same facts. *Kapoor*, 298 Ill.App.3d at 786, citing *Philips Electronics, N.V. v. New Hampshire Insurance Co.*, 295 Ill.App.3d 895 (1998). The inquiry is to be guided by common sense. *Kapoor*, 298 Ill.App.3d at 786, citing *Illinois Central Gulf R.R. Co. v. Goad*, 168 Ill.App.3d 541 (1988).

The parties do not dispute that the Illinois Attorney General and DuPage County State's Attorney filed a Verified Complaint for Injunctive and Other Relief based upon Defendants' alleged violations of the Act, on November 3, 2017, almost three (3) months prior to Ms. Rice

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the consideration of comity will not preclude a dismissal. *Overnite Trans. Co.*, 332 Ill.App.3d at 76, citing *Kapoor*, 298 Ill.App.3d at 790.

filing her initial Complaint (which did not include such alleged violations), and involves the same statutory provisions asserted in Rice's now-included EPA Counts. *See* **Ex. A and Ex. C.**

Plaintiff's interests asserted in Counts I-III of her Amended Complaint are sufficiently similar, if not *identical*, to those sought by the Attorney General and State's Attorney in the DuPage Chancery action. Plaintiff claims that Defendants violated specific provisions under the Act and Illinois Administrative Code by their alleged conduct prior to the incident on October 20, 2017. *See*, **Ex. A**; *Plaintiff's First Amended Complaint*, Counts I – III at pp. 34-161. The Plaintiffs in *People v. Speedway*, DuPage County, 2017 CH 1505 sought injunctive and other relief for statutory and code violations relating to the same conduct, specifically the subject UST system and Defendants' conduct leading up to the incident on October 20, 2017. *Id.* Plaintiff's Amended Complaint further asserts that Ms. Rice had a private cause of action entitling her to the penalties and damages recognized under the provisions and purpose of the Act. **Ex. A.**

A Consent Order was entered on December 4, 2018 which resolved the injunctive relief and monetary damages sought by Plaintiffs in *People v. Speedway*, DuPage County, 2017 CH 1505, based on Defendants' alleged statutory violations pursuant to the Act. **Ex. C** and **Ex. D**. The monetary damages available as relief for Defendant's alleged violations under the applicable provisions of the Act were addressed, ordered and paid by Defendants in accordance with the stipulations and mandates of the Consent Order. **Ex. C**. The injunctive relief, inspection and reporting requirements delineated in the Consent Order have been complied with and carried out as ordered. **Ex. C** and, e.g., **Ex. D**. Rice's EPA Counts seek no additional remedies under the Act that are available to the intended party. While Plaintiff curiously and inexplicably references criminal penalties under the Act, basic common sense establishes that Ms. Rice, an ordinary citizen, was neither an agency of the State nor a unit of local government that was "vested by law

or ordinance with the duty to maintain public order and to enforce *criminal* laws or ordinances." 415 ILCS 5/22.58 (a) (3). Thus, any allegation implying Defendants acted in a criminal manner, committed a criminal violation of the Act or are subject to a criminal penalty, is wholly baseless, inflammatory and, at best, in poor taste.

The parties need not be identical to find that two actions are between the "same parties" for Section 2-619(a)(3) purposes. *Kapoor*, 298 Ill.App.3d at 789. The test is satisfied if the litigants' interests are sufficiently similar, even though differing in name or number. *Cummings v. Iron Hustler Corp.*, 118 Ill.App.3d 327, 333 (1983), citing *International Games v. Sims, Inc.*, 111 Ill.App.3d 922 (1982). Pursuant to the statutory provisions of the Act, and in accordance with the purpose and public policy of the Act, the Attorney General and DuPage County State's Attorney filed the 2017 Chancery action on behalf of "The People of The State of Illinois" on their own motion and at the request of the Illinois EPA. **Ex. A, Ex. C**. The purpose of the Act is 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 caused them. 415 ILCS 5/2(b). The 2017 Chancery action and resulting 2018 Consent Order effectuated the purpose of the Act; the quality of the affected environment was protected by the November 13, 2017 Agreed Immediate and Preliminary Injunction Order and ongoing reporting requirements pursuant to the December 4, 2018 Consent Order; the adverse effects on the environment allegedly caused by Defendants' USTs were evaluated, remediation plans were developed and compliance with specific remediation efforts has been maintained; and appropriate monetary penalties under the Act have been assessed against and paid by Defendants.

The EPA Counts contain no allegations distinguishing themselves from the adjudicated Chancery action; thus, the occurrence giving rise to Counts I-III (i.e., the violations of the Illinois Environmental Protection Act and Illinois Administrative Code) and Plaintiff's interests (*i.e.*, for Defendants' to be held accountable for those violations originally charged and imposed in the 2017 Chancery action) are sufficiently similar in both cases to satisfy the "same cause" and "same parties" elements required to dismiss the EPA Counts as duplicative litigation pursuant to Section 2-619(a)(3).

Section 2–619(a)(3) was designed to prevent duplicative actions and that the central inquiry is "not whether the legal theories or the relief sought materially differs between the two actions." *Kapoor*, 298 Ill.App.3d at 790; see *Katherine M. v. Ryder*, 254 Ill.App.3d 479 (1993) (the fact that the plaintiffs were unable to assert their state law claims in federal court was irrelevant to the determination of a section 2–619(a)(3) dismissal).

When exercising its discretion in ruling on a Section 2-619(a)(3) motion to dismiss, the court must weigh the potential prejudice to the nonmovant if the motion is granted, against the policy and purpose of avoiding duplicative litigation. *Overnite Transp. Co.*, 332 Ill.App.3d at 78, citing *Kapoor*, 298 Ill.App.3d at 785-86.

As stated above, the Consent Order and compliance therewith entered in the 2017 Chancery action brought under the Illinois Environmental Protection Act and on behalf of "The People of The State of Illinois" provided the relief Plaintiff is actually seeking in Counts I-III. Plaintiff alleges that the harm caused by Defendants' alleged violations of the Act is due to Defendant's conduct leading up to the October 20, 2017 incident and resulted in the adverse and hazardous environmental condition. *See*, *Plaintiff's First Amended Complaint*, Counts I – III at pp. 34-161. Simply put, Plaintiff's "remedy" sought is inextricably linked to both the allegations the Illinois

Attorney General and DuPage County State's Attorney charged against Defendants in the Chancery action, and the resolution of that action on December 4, 2018. Plaintiff's available relief under the Act (*i.e.*, an injunction to stop the environmental hazards caused by the Defendants' USTs) has already been achieved within the purpose of the Act on behalf of all affected People of The State of Illinois. Therefore, the relief sought in Rice's EPA Counts has already been provided on November 13, 2017 and December 4, 2018, and thereby renders these Counts moot. *See*, **Ex. B and Ex. C**.

B. The EPA Counts Must Be Dismissed Pursuant to 735 ILCS 5/2-615 For Failure to State A Claim Upon Which The Monetary Relief Sought May Be Granted.

A motion to dismiss under 732 ILCS 5/2-615 is properly granted where the plaintiff fails to state a cause of action upon which relief can be granted. *Neade v. Portes,* 193 Ill. 2d 433, 439 (2000). A motion to dismiss pursuant to section 2-615 of the Code of Civil Procedure attacks the legal sufficiency of the complaint. *Borowiec v. Gateway 2000, Inc.,* 209 Ill.2d 376, 382, 808 N.E. 2d 957, 961 (2004). It alleges only defects appearing on the face of the complaint. *Id.* Thus, the question presented by a section 2-615 motion is whether the allegations of the complaint, when viewed in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief can be granted. *Id.* "In other words, the defendant in such a motion is saying, "So what? The facts the plaintiff has pleaded do not state a cause of action against me." *Winters v. Wangler*, 386 Ill.App.3d 788, 792, 898 N.E.2d 776, 779 (2008).

When ruling on a motion to dismiss pursuant to Section 2-615, a court must accept all well-pleaded facts in the First Amended Complaint as true and draw all reasonable inferences from those facts in favor of the nonmoving party. *Id.* However, the court does not accept as true mere conclusions of law or fact. *Mid-Town Petroleum, Inc. v. Dine*, 72 Ill.App.3d 296, 302 (1st Dist. 1979). As a result, a motion to dismiss should be granted if it is apparent that no set of facts can

be proved that would entitle the plaintiff to recovery. *Marshall v. Burger King Corp.*, 222 Ill.2d 422, 429 (2006).

The purpose of the Act is 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 caused them. 415 ILCS 5/2(b). Plaintiff also cites to the Leaking Underground Storage Tank Program (the LUST Act). (415 ILCS 5/57 *et seq.*). Section 57.7 of the LUST Act pertains to the Site Investigation and Corrective Action. (415 ILCS 5/57.7).

Although the Act does not exclude existing civil or criminal remedies for wrongful actions, relief for "any person adversely affected in fact by a violation of the Act," is limited under 415 ILCS 5/45(b). An individual may sue for injunctive relief against such a violation, however the plaintiff must have: (1) *first* filed a complaint with the Board meeting the requirements of Section 31(c); (2) immediately served a copy of the complaint upon the person named therein; and (3) the Board denied plaintiff's requested relief. (415 ILCS 5/31(d)(1)). The plaintiff must then wait 30 days from the date the plaintiff was denied relief by the Board before filing a lawsuit for injunctive relief against the person or entity who allegedly violated the Act. (415 ILCS 5/45(b)). In other words, a plaintiff seeking to assert claims based on purported violations of the Act *must exhaust her administrative remedies* before bringing the claims before the court. *See, Decatur Auto Auction Inc. v. Macon County Farm Bureau, Inc.*, 255 Ill. App. 3d 679 (1993). The Act contains no provisions that allow a claimant to circumvent the administrative procedures delineated in therein.

Plaintiff presents no evidence, let alone mere allegations, that they have complied with the Act and exhausted all administrative remedies. Based on the plain language of the statute, Plaintiff cannot maintain the EPA counts here. Neither Plaintiff nor Margaret Rice ever filed a complaint

or requested a hearing regarding the incident at issue in this case, or any alleged prior incident. It also does not appear that Margaret Rice filed any type of appeal or request for hearing within the 21 days' notice of the settlement agreement reached between the Attorney General's office and Defendants. *See* 415 ILCS 5/31(c)(2). The settlement agreement between the Attorney General and Speedway was published at the end of 2018. There is no evidence or even allegations that Margaret Rice took *any* action whatsoever with respect to the alleged violations that were previously the subject of the Attorney General's 2017 action in the 3 ½ years since the State's Action was filed. Without some evidence to the contrary, Plaintiff has failed to demonstrate that Rice exhausted her administrative remedy provided by the Act. Therefore, Plaintiff should be barred from asserting any claim for statutory relief provided for violations under the Act.

Moreover, assuming *arguendo* that Plaintiff is not barred from asserting a claim under the Act, Plaintiff's remedies would be limited to injunctive relief against the alleged violations (415 ILCS 5/45(b)), and such remedies would now be moot as Defendants' have already remedied the condition(s). See *Henry Hannah v. Minnesota Paints, Inc.*, 1971 P.C.B Case No. 123 (1971); *Dale H. Moody v. Flintkote Co.*, 1970 P.C.B. Case No. 36, 1971 P.C.B. Case No. 67 (1971); *Johns Manville v. Department of Transportation*, 2016 P.C.B. 14-3 (December 15, 2016).

Plaintiff's EPA Counts purportedly state claims of strict liability based on Defendants' alleged violations of the Act. However, Plaintiff's claims are unsupported by any common law or statutory provision that imposes strict liability on Defendants. In fact, no Illinois court has imposed strict liability on an alleged "polluter" such as the Defendants. *See Phillips Petroleum Co. v. Illinois Environmental Protection Agency*, 72 Ill.App.3d 217, 220 (1979). Under Illinois law, violation of a statute designed to protect life or property is *prima facie* evidence of negligence. *Test Drilling Service Co. v. The Hanor Company, et al.*, 322 F.Supp.2d 957, 962-64 (2003), *Dini*

v. Naiditch, 20 Ill.2d 406, 417 (1960). However, the violation does not constitute negligence *per se*, since evidence of negligence may be rebutted with proof that the party acted reasonably under the circumstances, despite the violation. *Id.* There can be no strict liability for violation of the statute *unless* the legislature clearly intended to impose strict liability. *Abbasi ex rel. Abbasi v. Paraskevoulakos*, 187 Ill.2d 386 (1999). The Act does not contain language indicating that the legislature intended to impose strict liability for violating its statutory provisions. *See*, *The Hanor Company, et al.*, 322 F.Supp.2d at 962-64 (2003), citing *Abbasi*, 187 Ill.2d 386 (1999). This is yet another reason Plaintiff's EPA Counts should be dismissed.

C. Plaintiff's EPA Counts Are Barred By The Statute Of Limitations.

In an effort to avoid duplication of arguments, Defendants rely on, and incorporate, its arguments in the companion 2-615 Motion to Dismiss regarding the untimely EPA Counts. There Defendants argued that plaintiff had one year from the death of Margaret Rice to file any new claims that did not relate back to the causes of action in the original Complaint. There is no doubt that the EPA Counts are new and do not relate back to the negligence claims in the 2018 Complaint. Therefore, this Court should grant this motion to dismiss the EPA Counts.

IV. CONCLUSION

Counts I, II and III must be dismissed pursuant to Section 2-615 and 2-619(a)(3). Based upon the language of, and case law interpreting, the Illinois Environmental Protection Act, the legislature did not explicitly create or intend to impose strict liability for violating the statutory provisions therein. Therefore Plaintiff failed to state a cause of action upon which relief may be granted pursuant to her allegations asserted in Counts I-III of Plaintiff's First Amended Complaint. Even if Counts I, II and III were not found to be facially deficient, Plaintiff's claims pursuant to the Act would *still* have to be dismissed because they arise from the same occurrence as the

adjudicated Chancery case brought by the Illinois Attorney General and State's Attorney in *People v. Speedway*, DuPage County, 2017 CH 1505; are duplicative of that action filed before the initiation of the case at bar; and cannot provide the relief requested because that relief has already been afforded to Plaintiff and the People of The State of Illinois. Last, the EPA Counts are barred by the statute of limitations which was one year from the death of Margaret Rice, i.e., November 22, 2020.

WHEREFORE for the foregoing reasons, the Defendants, SPEEDWAY LLC ("Speedway"), MARATHON PETROLEUM CORPORATION ("MPC"), and MANOJ VALIATHARA ("Valiathara"), pray that this Honorable Court Grant Defendants' Motion to Dismiss Counts I, II and III of Plaintiff's First Amended Complaint, *with prejudice*; and for any other relief this court deems proper.

Respectfully Submitted,

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#37188

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

LAURA E. RICE, as Special Representative of the Estate of MARGARET L. RICE, deceased

Plaintiffs,

vs.

MARATHON PETROLEUM CORPORATION, a Delaware Corporation, SPEEDWAY, LLC., a Delaware Limited Liability Company, and MANOJ VALIATHARA,

Defendants.

No.: 18 L 000783
Consolidated w/18 L 010930

MARATHON PETROLEUM COMPANY, an Ohio Corporation, SPEEDWAY, LLC., a Delaware Limited Liability Company, and MANOJ VALIATHARA,

Third-Party Plaintiffs,

vs.

FLAGG CREEK WATER RECLAMATION DISTRICT

Third-Party Defendants.

RESPONSE TO DEFENDANT'S MOTION TO DISMISS
COUNTS I, II, AND III OF PLAINTIFF'S FIRST AMENDED COMPLAINT

Now comes the plaintiff, Laura A. Rice, Special Representative for Margaret L. Rice, Deceased, by and through Budin Law Offices and for her Response to Defendants Motion to Dismiss Counts I, II, and III of Plaintiff's First Amended Complaint, states as follows:

1. This is defendants second 2-615 and 2-619 Motion to dismiss filed on May 18, 2021.

2. Plaintiff relies upon the case law relating to 2-615, 2-619, and 2-619.1 motions as stated in her response to defendants Motion to Dismiss #1, entitled Defendant's Motion to Dismiss Amended Complaint, Motion to Dismiss Amended Complaint, Motion to Continue Punitive Damages Motion, and Alternatively, Motion to Dismiss Counts IV, VI, and VIII.

3. For the record plaintiff has not yet filed a "first" Amended Complaint, but rather an Amended Complaint.

4. The present Motion to dismiss is for failure to state a claim under 2-619(a)(3), which states:

> (a) Defendant may, within a time for pleading, file a motion for dismissal of the action or for other appropriate relief upon any of the following grounds. If the grounds do not appear on the face of the pleading attacked the motion shall be supported by affidavit:
>
> (3) That there is another action pending between the same parties for the same cause.

5. The first eleven pages of defendants present MTD are devoted to the argument that Plaintiff's Amended Complaint Counts I, II, and III, should be dismissed because they are "duplicative" of the Attorney General and State's Attorneys filing in the Circuit Court of DuPage County. Defendant claims that "Plaintiff's interest asserted in Counts I – III of her Amended Complaint are sufficiently similar, if not *identical*, to those sought by the Attorney General and the State's Attorney in the DuPage Chancery Action". See, Motion to Dismiss, p. 8.

6. Defendant's, "duplicative", argument is belied by a plain reading of the caption of the State's Complaint and Plaintiff's Amended Complaint at Law, which clearly show that none of the parties, other than Speedway, LLC are the same, and that the

respective counts in each lawsuit are very different.

7. The State's Verified Complaint for Injunction and Other Relief consists of four Counts: Count I, Substantial Danger to the Environment, Public Health and Welfare of Persons, Violation of Section 5/43(a); Count II, Air Pollution, in Violation of 415 ILCS 5/9(a); Count III: Water Pollution, in Violation of 415 ILCS 5/12(a); and Count IV, Creating a Water Pollution Hazard, in Violation of 415 ILCS 5/12(d).

8. Nowhere in the State's Complaint is LUST or LUST violations referenced. Counts I, II, and III of Plaintiff's Amended Complaint are all provided by LUST, and the related laws, regulations, and rules promulgated by LUST.

9. This, "duplication", claim by defendants' is not supported in any way by the record. Again, the differences between the State's Verified Complaint and Plaintiff's Amended Complaint are obvious. Without the same parties and similar claims there can be no, "duplicative" complaints.

10. Counts I, II, and III of Plaintiff's Amended complaint are primarily based on violations of LUST that occurred between November 14, 2016 through October 20, 2017. The State's Complaint concerns itself with violations from the same release of petroleum but for subsequent EPA violations occurring beginning October 20, 2017, and continuing forward.

11. The issues and differences in the Counts clearly show that the causes of action are entirely different. Plaintiff's Counts all come from Article XVI of the Act, which, though interrelated, stands alone from the other separate Articles of the Act that are based on Air Pollution violations and Water Pollution violations. The State also sought different remedies/damages then Plaintiff; to wit; injunctive relief/damages/

remedies due to imminent substantial danger, and civil penalties. Plaintiff has never requested these types of damages/remedies.

12. Defendant then references the Consent Order that was entered by the Circuit Court of DuPage County/ See, MTD, p. 8, 9. It must be noted that there was never an adjudication on the merits of the State's action.

13. Initially, page 1 of the Consent Order states, "None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of Illinois Environmental Protection Act, 415 ILCS Section 5/1 et. seq. (2016), alleged in the Verified Complaint except as otherwise provided herein." See, Defendant's Ex. C, p. 1. Why Defendants are now violating the terms of the Consent Order is unusual, and an obvious breach of the Consent Order.

14. Defendants also ignore the fact that the $75,000 fine Defendant Speedway paid for the EPA violations noted in the Consent Order were not for any type of LUST or LUST related violations. The State's case against Speedway was for remedial/corrective action, injunctive relief and civil penalties. There were no damages/remedies sought for bodily injury due to the leaking underground storage tank, RULA North, at Speedway #7495, as stated throughout Plaintiff's Amended Complaint, in the State action.

15. The cases cited by defendants for the proposition that the two lawsuits are somehow, "identical", involve parties who were identical and litigating the same issues in two different forums at the same time. That it is clearly not the case here.

16. Defendants' also assert that plaintiff is claiming, "statutory penalties and/or fines." This a falsehood. Nowhere in plaintiff's Amended Complaint does she seek statutory penalties and/or fines. She seeks to have her damages assessed pursuant to

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COUNTY DEPARTMENT, LAW DIVISION

LAURA E. RICE, as Special Representative of the Estate of MARGARET L. RICE, deceased

Plaintiffs,

vs.

MARATHON PETROLEUM CORPORATION, a Delaware Corporation, SPEEDWAY, LLC., a Delaware Limited Liability Company, and MANOJ VALIATHARA,

Defendants.

MARATHON PETROLEUM COMPANY, an Ohio Corporation, SPEEDWAY, LLC., a Delaware Limited Liability Company, and MANOJ VALIATHARA,

Third-Party Plaintiffs,

vs.

FLAGG CREEK WATER RECLAMATION DISTRICT

Third-Party Defendants.

No.: 18 L 000783
Consolidated w/18 L 010930

PLAINTIFF'S MEMORANDUM OF LAW ON WHETHER 415 ILCS 5/57.1-19 (LUST) PROVIDES A PRIVATE RIGHT OF ACTION FOR PLAINTIFF IN THE CASE AT BAR

Now comes plaintiff, LAURA E. RICE, as Special Representative of the Estate of MARGARET L. RICE, deceased, and for her Memorandum of Law on Whether 415 ILCS 5/57.1-19 (LUST) Provides a Private Right of Action for Plaintiff in the Case at Bar, states as follows:

I. INTRODUCTION

1. During the case management conference on May 20, 2021, the Court mentioned that it was curious regarding the issue of whether LUST provides plaintiff with a private cause of action for bodily injury due to violations of LUST as stated in Plaintiff's Amended Complaint at Law, Counts I, II, and III.

2. It is plaintiff's contention that LUST, and related laws promulgating LUST regarding underground storage tanks, caselaw, and public policy, expressly provide a private right of action for a person who suffers a bodily injury as a result of a leaking underground storage tank. It is one of the clear features of LUST.

3. In the alternative it is plaintiff's contention that LUST, and related laws promulgating LUST regarding Underground Storage Tanks, caselaw and public policy, provide, by implication, a private right of action for plaintiff under LUST for its violations, as stated in Plaintiff's Amended Complaint, Counts I, II, and III (hereafter "Complaint") for bodily injury caused by a petroleum leaking underground storage tank.

A. LEGAL RESEARCH

4. Legal research reveals that there is neither Illinois nor federal case law addressing the issue of whether a person injured as a result of a leaking underground storage tank has either an express or implied private right of action under LUST. There is no Illinois or federal case law interpreting the definition of, "bodily injury," as it is defined in LUST and other environmental regulations and laws promulgated pursuant to LUST. Nor is there any case law interpreting the meaning of the indemnification clause concerning bodily injuries found in LUST and other related underground storage tank (hereafter "UST") laws. See, 415 ILCS 5/57.2 "Definitions."

5. It is plaintiff's contention that a plain reading of LUST, and related statutes, makes clear the legislature intended that plaintiff, in the case at bar, has an express private right of action under LUST.

6. The issue before the Court appears to be one of first impression: whether plaintiff has a private right of action under LUST against defendants owner/operators of a leaking UST, for bodily injuries caused by the release of petroleum from their leaking UST?

7. Research reveals only (2) two ISBA Environmental Newsletter Articles which are highly relevant to the subject matter before the Court. They are beneficial in explaining LUST and the issues before this Court. See, Plaintiff's Ex. #55, ISBA, Environmental Law Newsletter, January, 2002, "**A LUST for Money; Rediscovering the Indemnification Provisions of the Leaking Underground Storage Tank Program**; Plaintiff's Ex. #56, ISBA Environmental Law Newsletter April, 2016, "**LUST at 27: The Leaking Underground Storage Tank Fund and the Incredibly Invisible Indemnification Provisions**". Both articles are written by Phillip R. Van Ness. Mr. Van Ness is a well-respected authority on Illinois Environmental Law. His two articles will prove to be immediately instructive to the Court. If defendants have contrary case law, statutes, or articles concerning the issue before the Court, they would be welcome.

8. The two ISBA articles discussing the LUST indemnification clause clearly support plaintiff's contention that she has an express private right of action under LUST for her injuries/burns sustained on October 20, 2017.

II. COMMON FACT PATTERNS/ISSUES

9. There are two common fact patterns that emerge in the overwhelming majority of reported cases concerning leaking underground storage tanks: (1) Actions

involving contamination on the land; (2) actions involving migration of contamination off the land.

10. Causation is often an issue in leaking UST cases. In the vast majority of cases the UST's had been leaking for years, and, in many, if not most, instances, for decades, before the leaking UST was discovered doing harm or damage.

11. A unique fact in this case is that causation is not an issue. This release took place over days, not years. There is no question that the subject UST, 113 RUL A NORTH, (hereafter "RUL A NORTH") at Speedway Station #7445, Westmont, IL, released the petroleum into the environment that caused plaintiff's injuries/burns. The release has been confirmed by all defendant's, and at least four independent, separate, governmental agencies.

12. Other unique facts of this case are that in the first two weeks of October, 2017, an extraordinarily large amount of petroleum, nearly 10,000 gallons, "a catastrophic release," according to the Office of the State Fire Marshal (hereafter "OSFM"), was released into the environment over a very short period of time. Research reveals this release of petroleum was the largest release from a single 10,000 gallon UST not only in Illinois history, but the entire country. Defendant MPC had illegally filled, to full capacity, the defective UST RUL A NORTH. The entire tank's contents, 9816 gallons, was then released into the environment in the first two weeks of October, 2017. The facts stated in Plaintiff's Complaint, p. 19, pars. 109 -110, pg. 20 -23, are undisputed.

13. In this memorandum, Illinois UST laws and regulations will first be examined. Second, relevant Illinois case law, including controlling and applicable case law on private right of actions, will be examined. Third, penalties/damages under the Act will be explained. Fourth, public policy issues will be discussed. Fifth, relevant federal

case law will be examined. All of defendants arguments, and the Court's interest in the private right of action issue, are addressed.

14. In both of their Motions to Dismiss filed on May 18, 2021, defendants, raise issues of standing, mootness, exhaustion of administrative remedies, private right of action, strict liability, purpose of EPA and damages.

15. Many of these issues are directly addressed in Plaintiff's Motion for Punitive Damages by Operation of Law Pursuant to LUST (hereafter, Ex. #57, "MPOL," attached). Yet, defendants asked this Court to delay responding to Plaintiff's MPOL. Plaintiff will refer the Court and defendants to her MPOL that address defendants' arguments, and include additional relevant authority as necessary on those issues.

III. STATUTORY CONSTRUCTION

16. In considering this matter the Court may, find it necessary to engage in statutory construction. To that end plaintiff relies upon the applicable case law cited in Ex. #57, Plaintiff's MPOL, p. 20 – 22, on the rules of statutory construction.

IV. ILLINOIS LUST LAWS AND PROMULGATED REGULATIONS, RULES, AND STATUTES

A. LUST, BY ITS TERMS EXPRESSLY PROVIDES A PRIVATE CAUSE OF ACTION FOR BODILY INJURY DUE TO A LEAKING UST

17. 415 ILCS 5/57 (LUST), **Intent and Purpose**, states in part,

> "The purpose of this Title is, in accordance with the requirements of the Hazardous and Solid Waste Amendments of 1984 of the RCRA and in accordance with the State's interest in the protection of Illinois' land and water resources: (1) to adopt procedures for the remediation of underground storage tank sites due to the release of petroleum and other substances regulated under this Title from certain underground storage tanks or related tank systems; (2) to establish and provide procedures for a Leaking Underground Storage Tank Program which will oversee and review any remediation required for leaking underground storage tanks, and administer the Underground Storage Tank Fund; (3) to establish an Underground Storage Tank Fund **intended to be a State Fund by which persons who qualify for access to the Underground Storage Tank**

> **Fund may satisfy the financial responsibility requirements under applicable State law and regulations**; (emphasis supplied) (4) to establish requirements for eligible owners and operators of underground storage tanks to seek payment for any cost associated with physical soil classification, ground water investigation, site classification and corrective action from the Underground Storage Tank Fund; and (5) to audit and approve corrective action efforts performed by licensed professional engineers.

18. As plaintiff's Exhibit's #56 explains, the LUST program is directed against **both** public and private injuries due to leaking UST's. See, Plaintiff's Ex. #55, ISBA Environmental Newsletter article January, 2002, p. 1, 2, 6.

1. LUST IS UNIQUE

19. LUST, Article XVI, of the IEPA, and laws promulgating it, have many unique features that make it clear the legislature intended an express private right of action for persons suffering bodily injuries/burns as a result of a leaking UST. These features include:

(1) The Definitions contained in LUST 5/57.2, including:

(a) Bodily injury;

(b) Release;

(c) Fund;

(d) Indemnification;

(e) Corrective action;

(f) Occurrence;

(g) Owner/operator;

(h) Property damage.

(2) The Indemnification Clause governing LUST;

(3) The strict liability standard for violations of LUST and laws promulgated under it;

(4) The Illinois Tax Payer Funded UST Fund;

(5) The Liability/Financial requirements; and

(6) The Penalties under 415 ILCS 5/42(h)(1)-(8).

20. These features of LUST, both separately and as whole, express the legislative intent that persons injured/burned as a result of a leaking UST may bring a cause of action in the Circuit Court for damages which are assessed, by operation of law, pursuant to 415 ILCS 5/42(h)(1)-(8). 5/42(h) (1)-(8) applies to lawsuits for both "corrective actions" and "bodily injuries," as defined in LUST.

21. A plain reading of the LUST definitions of "Bodily injury" and "Indemnification" clearly express the legislative intent of allowing bodily injury actions for violations of LUST. 415 ILCS 5/57.2

22. Definitions found in LUST are utilized/adopted in the UST laws promulgated pursuant to LUST, including: (1) Gasoline Storage Act, 430 ILCS 15/4; (2) 35 Ill. Adm. Code, §734.115, and (3) 41 Ill. Adm. Code §176.200.

B. 415 ILCS 5/57.2, DEFINITIONS

23. "**Bodily injury**" means bodily injury, sickness, or disease sustained by a person, including death at any time, resulting from a release of petroleum form an underground storage tank.

24. By including the phrase, "at any time," in the "bodily injury" definition the legislature supplied an unlimited statute of limitation. The legislature must have been aware that leaking UST's can cause bodily injury, sickness, disease and/or death decades after the initial petroleum release. This duration of potential harm from a leaking UST to the environment, as well as persons, as shown by case law, infra, literally lasts decades.

25. "**Release**," means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum from an UST into groundwater, surface water or subsurface soils. 5/57.2

26. "**Fund**" means the Underground Storage Tank Fund. 5/57.2.

27. "**Indemnification**" means indemnification of an owner or operator for the amount of any judgment entered against the owner or operator in a court of law, for the amount of any final order or determination made against the owner or operator by an agency of State government or any subdivision thereof, or for the amount of any settlement entered into by the owner or operator, if the judgment, order, determination, or settlement arises out of bodily injury or property damage suffered as a result of a release of petroleum from an underground storage tank owned or operated by the owner or operator. 5/57.2

28. "**Occurrence**" means an accident, including continuance or repeated exposure to conditions, that result in a sudden or non-sudden release from an underground storage tank. 5/57.2

29. "**Property Damage**" means physical injury to, destruction of, or contamination of tangible property, including all resulting loss of use of that property; or loss of use of tangible property that is not physically injured, destroyed, or contaminated, but has been evacuated, withdrawn from use, or rendered inaccessible because of a release of petroleum from an underground storage tank. 415 ILCS 5/57.2.

30. The Gasoline Storage Act 430 ILCS 15/4(e) uses the definition of bodily injury from LUST, as well as the definitions of property damage, and occurrence.

31. 35 Ill. Adm. Code, Part 734, §734.115 utilizes the same definitions as LUST.

32. 41 Ill. Adm. Code §176.200 "Definitions", adopts the definitions found in LUST for bodily injury, occurrence, release, property damage, and UST Fund.

33. A plain reading of the above statutory definitions show the uniqueness of LUST, and the inescapable conclusion that the legislature intended an express private right of action for bodily injuries/burns due to a leaking UST as alleged in Plaintiff's Complaint.

34. These definitions are found only in LUST and related UST laws.

C. INDEMNIFICATION CLAUSE AND LUST FUND

35. The indemnification clause found in LUST, as well as other applicable UST statutes, shows the legislatures' express, and clear, intent to provide a private right of action due to bodily injury from a leaking underground storage tank.

36. LUST, 415 ILCS 5/57.2: states:

> **"Indemnification" means** indemnification of an owner or operator for the **amount of any judgment entered against the owner or operator in a court of law**, for the amount of any final order or determination made against the owner or operator by an agency of State government or any subdivision thereof, **or** for the amount **of any settlement entered into by the owner or operator, if a judgment**, order, determination or settlement **arises out of bodily injury or property damage suffered as a result of a release of petroleum from underground storage tank owned or operated by the owner or operator**". (415 ILCS 5/57.2) (emphasis supplied)

37. This statute alone grants plaintiff an express right of action under LUST.

38. LUST, 415 ILCS 5/57.8 states: **"Underground Storage Tank Fund; payment; options for State payment; deferred correction election to commence corrective** action upon availability of funds.

39. 57.8(d) states: "Notwithstanding any other provisions of this Title, the Agency shall not approve payment to an owner or operator from the Fund for costs of

corrective action **or indemnification** incurred during a calendar year in excess of the following aggregate amounts based on the number of petroleum underground storage tanks owned or operated by such owner or operator in Illinois. (emphasis added)

Amount	Number of Tanks
$2,000,000.00	Fewer than 101
$3,000,000.00	101 or more

40. 57.8(g)(1) and (2) further shows the legislature's intent by allowing the UST fund to authorize access to funds for both "corrective action" and "indemnification claims." It states:

> **(g) "the Agency shall not approve any payment from the fund to pay an owner or operator:**
>
> **(1) for costs of corrective action incurred by such owner or operator in an amount in excess of $1,500,000.00 per occurrence; and**
>
> **(2) for costs of indemnification of such owner or operator in an amount in excess of $1,500,000.00 per occurrence.** (emphasis added)

41. 5/57.8(h) states: "the Payment of any amount from the Fund **for corrective** action **or** indemnification **shall be subject to the State acquiring by subrogation the rights of any owner, operator or other person to recover the cost of corrective action or indemnification for which the Fund has** compensated such owner, operator or person from the person responsible or liable for the release." (emphasis added)

42. The State of Illinois UST Fund, is funded, in large part, by Illinois citizen/tax payers. The UST Fund does not discriminate in its accessibility. It allows eligible persons to pursue claims for both corrective action/cost recovery, **or** for bodily injury from leaking UST's. (emphasis supplied) This is another example of the express legislative intent on the issue of an express private right of action for bodily injury under LUST.

43. 35 Ill. Adm. Code Sections 734.600 – 665, administers payments from the UST Fund. A plain reading of §734.600 – 734.665 also makes abundantly clear that the legislature, in enacting Article XVI, intended an express private right of action for bodily injuries due to leaking underground storage tanks.

44. The definition of "**Indemnification**", as defined in LUST, is also found in 35 Ill. Adm. Code, Subpart F: **Payment from the Fund**, §734-600.

45. 35 Ill. Adm. Code §734.620, states: "**Limitations on total payments**," §734.620(a)(1), (2), allows $1,500,000.00 per occurrence for corrective action reimbursement from the Fund **and a separate $1,500,000.00 per occurrence for indemnification from the Fund**. (citing 415 ILCS 5/57.8(g)(1)(2)) (emphasis supplied)

46. LUST, 35 Ill. Adm. Code §734.645, "**Subrogation of rights**," also distinguishes between "corrective action **or** indemnification" and requires reimbursement to the State if a person is compensated by other sources for either corrective action or bodily injury claims, and had earlier received money from the Fund due to a release of petroleum. Accord, 415 ILCS 5/57.8(h)

47. Another example of the legislatures expression of legislative intent is found in 35 Ill. Adm. Code §734.650(B)(i)(ii), "**Indemnification,**" states:

> (B) "**Proof of a legally enforceable judgment**, final order, or determination **against the owner or operator, or the legally enforceable settlement entered by the owner or operator, for which indemnification is sought**. The proof must include, but not be limited to, the following:
>
> > (i) A **copy of the judgment certified by the Court clerk** as a true and accurate copy...
> >
> > (ii) Documentation demonstrating that the judgment, final order, determination, **or settlement arises out of bodily injury or property damage suffered as a result of release of petroleum from a UST for which the release was**

reported, and that the UST is owned or operated by the owner or operator;" (emphasis supplied)

48. 35 Ill. Adm. Code §734.650(b)(2)(3) states:

"The Agency must review applications for payment in accordance with this Subpart F. In addition, the Agency must review each application for payment to determine the following:

(2) where there is sufficient documentation of a legally enforceable **judgment entered against the owner or operator in a court of law**, final order or determination made against the owner or operator by an agency of State government or any subdivision thereof, or settlement entered into by the owner or operator;

(3) whether there is sufficient documentation that the judgment, final order, determination, **or settlement arises out of bodily injury or property damage suffered as a result of a release of petroleum from an underground storage tank owned or operated by the owner or operated:**" (emphasis supplied)

49. 35 Ill. Adm. Code, Section 734.650(d)(2)(5) states:

"Costs ineligible for indemnification from the Fund include but are not limited to:

(2) Amounts of a judgment, final order, determination, or settlement **that do not arise out of bodily injury or property damage suffered as a result of a release of petroleum from an underground storage tank** owned or operated by the owner or operator;

(d)(5) **Amounts arising out of bodily injury or property damage suffered as a result of a release of petroleum from an underground storage tank for which the owner or operator is not eligible to access the Fund;**" (emphasis supplied)

50. Clearly, the above statutes, governing payment from the UST Fund pursuant to 35 Ill. Adm. Code, Subpart F, **"Payment from the Fund,"** and LUST, express separately, and as a whole, that the legislature intended persons to have a private right of action against owners and operators of leaking UST's that cause their injuries. What other reasonable explanation is there for the above statutes?

51. The State cannot seek subrogation rights on causes of action that do not exist. The subrogation rights can only be exercised if there is an express underlying private right of action for bodily injury due to violations of LUST.

52. Why would the legislature enact the LUST definitions, Indemnification and Subrogation clauses, and specific statues regarding injury and property damage sustained as a result of leaking UST's if a private right of action is not expressly recognized by the legislature? This is defendant's burden to explain.

53. If this Court were to grant defendants Motion to Dismiss Plaintiff's Amended Complaint I, II, and III, it would not only ignore the obvious legislative intent but render the above statutes on LUST Definitions, Indemnification, and Subrogation useless and completely without meaning.

54. An overview of how the Illinois' UST Fund operates is found in OK Trucking Company v. Armstead, 1995 Ill. App. LEXIS 546, 274 Ill. App. 3d 376, (1st Dist. 1995). OK Trucking Company examines how owners and operators access and utilize the Illinois Underground Storage Tank Fund, administered through the Gasoline Storage Act, and the OSFM role in regulating and enforcing Illinois UST laws. An example of how cost recovery actions work on the federal level is found in Marathon Oil Company v. Texas City Terminal Railway Company, 2001 U.S. Dist. LEXIS 16007 (S.D. Texas). In Marathon, plaintiff Marathon brought a citizen suit pursuant to the Federal UST laws seeking cost recovery damages from defendant. Marathon lost on causation issues. See also, Aurora National Bank v. Tri-Star Marketing, Marathon Petroleum Company, 1998 U.S. Dist. LEXIS 472,16 ("Tri-Stars financial responsibility for remediation would be limited since Tri-Star's outlay would be reimbursed by Illinois' UST insurance program").

1. IN THE CASE AT BAR DEFENDANTS HAVE ACCESSED AND UTILIZED THE ILLINOIS LUST FUND

55. In the case at bar defendants have, based upon information and belief, applied for and received at least $222,866.10 from the Illinois taxpayer funded UST Fund. See, Plaintiff's Ex. #228, September 10, 2018, certified mail letter to Illinois Environmental Protection Agency, Bureau of Land, Leaking UST Claims Unit from John L. Helms, Corporate Manager Environmental, Speedway Corporation, p. 1 -20; December 1, 2017, letter from Office of Illinois State Fire Marshal to Speedway LLC. regarding additional reimbursement for costs associated with "Corrective Action", p. 21 – 26.

56. 35 Ill. Adm. Code Section 734.630, states: **Ineligible Corrective Action Costs, "Costs ineligible** for payment from the Fund **include**, but are not limited to:

> (c) **costs incurred as a result of** vandalism, theft, or **fraudulent activity** by the owner or operator or agent of an owner or operator, **including the creation of spills, leaks, or releases"**. (emphasis supplied)

57. By September 10, 2018, defendants MPC/Speedway knew they were not eligible for LUST Funds. (emphasis supplied)

58. Defendants, by **not being eligible** to apply for LUST fund reimbursement, attempted to illegally take money from the Illinois LUST Fund. (emphasis supplied)

59. As requested, defendants MPC/Speedway illegally received at least $222,866.10 from the Illinois UST Fund for the petroleum release that is the subject of this cause of action.

60. Simple math states $222,866.10 minus $75,000.00 (that defendant Speedway paid for violations of the Clean Water and Air Pollution Acts from the release) means defendants are ahead by $147,866.10. This is **not** the way LUST is supposed to work. It is yet another reason that defendants Motion to Dismiss Plaintiff's Complaint must

be denied on public policy grounds. Attempted theft, and/or felony theft of taxpayers should not be rewarded by this Court.

61. The LUST program was neither designed nor intended to reward polluters like defendants. LUST, and the laws promulgated in relation to LUST, were never meant to reward persons like defendants. Defendants MPC/Speedway, by applying for, and taking money from the UST Fund, that they knew they were not eligible for, committed theft of the LUST Fund.

62. Defendants MPC/Speedway attempted theft and actual theft, of Illinois taxpayers in September, 2018, was merely the continuation of their violations of LUST and LUST related laws that commenced no later than November 17, 2016, when defendant MPC illegally transported and filled RUL A NORTH #1 with petroleum.

63. Finally, the Certification/Verification documents defendants signed to request money from the LUST Fund contains an indemnification clause that recognizes claims for both corrective action claims and indemnification/bodily injury claims. See, Plaintiff's Ex. #228, p. 3. Defendants, by officially applying for LUST funds, agreed to the terms of LUST, which included plaintiff's express private right of action against defendants for their multitude of LUST violations.

D. EQUAL PROTECTION AND DUE PROCESS

64. Another unique fact of the case at bar is that defendants, by asking the Court to dismiss Plaintiff's Amended Complaint, Counts I, II, and III, are creating unnecessary equal protection and due process Constitutional issues. This is due to the fact that defendants have taken advantage of, and benefitted from, LUST by accessing, requesting, and receiving payment, pursuant to LUST, in the amount of $222,866.10 for

the October, 2017, release, which caused plaintiff's injuries/burns. See, Plaintiff's Ex. #228.

65. To deny plaintiff her express private right of action under LUST for her injuries/burns as a result of each of the defendant's violations of LUST, would deny her equal protection and due process of law under both Illinois and Federal law when defendants benefited from the same statutory scheme.

66. Plaintiff, a lifelong Illinois resident/tax payer, likely contributed to the UST Fund during the course of her life time. She clearly, by LUST's definition of bodily injury, is the type of person the legislature expressly sought to protect, as corroborated by the other unique definitions found in LUST, the LUST indemnification and subrogation clauses and the UST Fund laws.

67. To allow persons to bring private causes of action pursuant to LUST for remedial/corrective actions when their property becomes contaminated, but not allow a person to bring a private right of action when the same contamination results in bodily injury, in addition to violating LUST, would be a clear violation of both the Federal and State Equal Protection and Due Process clauses.

V. LIABILITY INSURANCE/FINANCIAL REQUIREMENTS

68. The Gasoline Storage Act, 430 ILCS 15/1 which administers the UST Fund, states as follows:

> "**It shall be unlawful for any person**, firm, association or **corporation to keep, store, transport**, sell or use any crude **petroleum**, benzine, benzol, **gasoline**, naphtha, ether or other like volatile combustibles, or other compounds, in such manner or under such circumstances as will jeopardize life or property." (emphasis supplied)

69. The Gasoline Storage Act 430 ILCS 15/2 implements and administers the LUST programs.

70. Interpreting the Gasoline Storage Act, the Court, in First of America Trust v. Armstead, 1996 Ill. LEXIS 32, 171 Ill. 2d. 282, held that the OSFM had broad discretion and authority regarding whether a property owner was able to register underground storage tanks under the Gasoline Storage Act. The Armstead Court gave a history of the regulation of underground storage tanks, both nationally and in Illinois. It noted that the Gasoline Storage Act was enacted in partial fulfillment of the Federal requirements concerning the regulation of USTs as found in 42 U.S.C. §6991 et. seq. (1988). Armstead, 1996 Ill. LEXIS 32, 19.

71. The Financial Responsibility regulations for the Gasoline Storage Act are found at 430 ILCS 15/6.1(a)(b):

> (a) **Each owner or operator shall** establish and maintain evidence of financial responsibility, as provided in this Section, **for taking corrective action and compensating third parties for bodily injury and property damage.**
>
> (b) **Each owner or operator shall maintain financial responsibility** at the following minimum amounts:
>
> (1) $10,000 per occurrence for corrective action;
>
> (2) **$10,000 per occurrence for bodily injury and property damage to third parties**. (emphasis supplied)

72. This is another example of legislative intent on the issue before this Court.

73. 41 Ill. Adm. Code 176.205 "**Applicability**" states:

> (a) **This Subpart B applies to all owners or operators** of USTs in the ground as of April 1, 1995 **and implements Section 6.1 of the Gasoline Storage Act [430 ILCS 15/6.1]**, which imposes a State law financial assurance requirement of $20,000 per owner or operator.
>
> (c) **Although the UST Fund assists certain petroleum UST owners in paying for corrective action or third-party liability (see 415 ILCS 5/57.9), for purposes of this Subpart the UST Fund is not considered a mechanism for the financial responsibility compliance required under**

Section 6.1 of the Gasoline Storage Act as implemented by this Subpart. (emphasis supplied)

74. 41 Ill. Adm. Code §176.210, "**Amount**" states:

"Each owner or operator shall maintain financial responsibility of $20,000.00 regardless of the number of UST's or facilities owned or operated. This $20,000.00 shall be comprised as follows:

(a) $10,000.00 per occurrence for corrective action; and

(b) $10,000.00 per occurrence **for third party liability for bodily injury** or property damage. (emphasis supplied)

75. 35 Ill. Adm. Code §721.247 "**Liability Requirements,**" states:

Liability Requirements

(a) **Coverage for sudden accidental occurrences** the owner or operator of one or more hazardous secondary material reclamation facilities or intermediate facilities that are subject to financial assurance requirements pursuant to §721.104(a)(24)(f)(vi) must demonstrate financial responsibility **for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of its facilities. The owner or operator must maintain liability coverage in force for sudden accidental occurrences in the amount of at least $1,000,000.00 per occurrence with annual aggregate of at least $2,000,000.00, exclusive of legal defense cost."** (emphasis supplied)

76. Why would the legislature require owners and operators of UST's to needlessly pay mandatory insurance premiums for bodily injury from leaking UST's if there was no express private right of action under LUST recognized by the legislature?

77. Plaintiff has shown she has an express statutory private right of action under LUST for her bodily injuries/burns. Defendants now have the burden of proving otherwise with statutes that contradict the plain, ordinary meaning of the words used in the above referenced UST statutes.

78. Based on the Definitions, Indemnification and Subrogation Clauses, Liability Insurance and Financial Requirements, and UST Fund statutes referenced above, unless

and until defendants show otherwise, it would likely be manifest error for this Court to not find an express private cause of action under LUST.

VI. STRICT LIABILITY STANDARD

79. Defendants chose to raise the strict liability issue in their Motion to Dismiss. Plaintiff's Complaint, Count I, page 40, paragraphs 200 – 204 clearly states the Illinois law as it applies to LUST violations and strict liability. Strict liability issues are also addressed in plaintiff's MPOL Ex. #57, pages 9 -13.

80. Defendants are urged to respond to the applicable statutory and caselaw stated in Plaintiff's MPOL, p. 9 -13.

81. Defendants reliance on Phillips Petroleum Co. v. Illinois Environmental Protection Agency, 1979 Ill. App. LEXIS 2610, 72 Ill. App. 3d 217, is a misstatement of the law. See, Defendants Motion to Dismiss, p. 13.

82. Phillips Petroleum was decided in 1979, a year before the strict liability standard was adapted for environmental actions. See, People v. N L Industries, 1992 Ill. LEXIS 191, 152 Ill. 2d 82, 604 N.E.2d 349, (1992) see also, Perkinson v. Pollution Control Board, 1989 Ill. App. LEXIS 1289, 187 Ill. App. 3d 689 (3d Dist.) where the Court easily distinguished Phillips Petroleum and addressed the issue of strict liability, at least as it existed in the year 1989, under the Act.

83. Yet defendants, at the current time, are half correct on the issue of strict liability. In 1997, the legislature enacted a new Article, Title XVII, to the Illinois EPA. It is titled: "Site Remediation Program." It largely replaced strict liability under the Act with proportionate share liability. See, 415 ILCS 5/58.9.

84. However, the legislature clearly cemented their intention that they wanted a strict liability standard of liability for LUST violations by specifically excluding all UST laws from proportionate share liability.

85. 415 ILCS 5/58.1(a)(2), states: **Applicability**: (2) **Any person**, including persons required to perform investigations and remediations under this Act, **may elect to proceed** under this Title **unless** (iii) **the site is subject to federal or State underground storage tank laws.** (emphasis supplied) Accord, State Oil Company v. People, 2004 Ill. App. LEXIS 1209, 7 -9, 822 N.E. 2d 786.

86. In enacting 415 ILCS 5/58.1(a)(2) above, the legislature made clear that the standard of liability for LUST 5/57.12(g) was, and is, one of strict liability as found in 415 ILCS 5/22.2(f). This is the clear, expressed legislative intent on strict liability and LUST. And exactly what plaintiff has pled in her Complaint.

87. Unless and until defendants can show this Court a statute stating otherwise, and accompanying case law, their argument that LUST does not have a strict liability standard of liability, for actions based on LUST, such as in the case at bar, their argument must fall on deaf ears, as it is simply not correct.

A. PLAINTIFF'S ELEMENTS OF PROOF

88. All plaintiff must prove to establish strict liability against each defendant is found on page 39, paragraphs 197, 198, and 199, which state:

> "197. On October 20, 2017, defendant MPC was the owner, and/or operator, pursuant to LUST, of the UST's at Gas Station #7445.
>
> 198. During October, 2017, there was a release, pursuant to LUST, of petroleum from a UST at Gas Station #7445.
>
> 199. As a result of the release of petroleum from defendants UST located at Gas Station #7445, plaintiff, pursuant to LUST, on October 20, 2017,

suffered bodily injury and burns from the explosion at her residence caused by the release."

89. Once these three elements are proven, defendants are strictly liable for all of plaintiff's damages, with the jury being instructed that they are authorized to consider the eight 5/42(h)(1)-(8) factors, in reaching their verdict.

90. In environmental law cases deterrence has always been a factor in the damages assessment. Damages must act to deter not only defendants future conduct but all other UST owner/operators future behavior. This is what 5/42(h)(1)-(8) allows when the evidence supports it.

91. The case at bar was built around each individual defendant's various violations of Illinois' Environmental Safety and Public Safety laws. Illinois' environmental laws have always authorized the trier of fact to consider punishment when defendants have so egregiously violated the environmental and public safety statutes, especially when the violations cause bodily injury.

VII. ILLINOIS CASE LAW

92. Though never addressed, Illinois case law supports an express private right of action for persons injured as a result of a leaking petroleum UST.

A. NBD BANK CASE

93. Defendants, no doubt, will claim there is no private right of action under the Illinois EPA and cite to NBD Bank v. Krueger Ringier, Inc., 1997 Ill. App. LEXIS 700, 292 Ill. App. 3d 691, (1st Dist. 1997). The NBD Bank Court confronted the issue of whether a purchaser of real property can maintain an action for clean-up costs against the seller on public policy grounds. NBD, 1997 Ill. App. LEXIS 700, 12 -13.

94. The NBD Court held that the IEPA did not create a private right of action for cost recovery as a tort claim, and that the Act was not designed to protect parties to a real estate transaction. Id. 5 - 7.

95. The NBD Bank Court's primary consideration appeared to be with whether a cause of action would lie under the Act in the context of the purchaser/seller relationship. The NBD Court ruled the IEPA public policy concerns found in Illinois Supreme Court environmental cases was not present in the NBD Bank factual scenario.

96. The NBD Court distinguished between a recovery in tort and contract damages and held, "Under these facts, we hold that a private right of action under the IEPA does not exist, and the public concerns which governed the decisions in Brockman and Fiorini are not present here". NBD, 1997 Ill. App. LEXIS 700, 13.

97. The NBD Bank Court held that plaintiff's damages consisted of only economic loss and thus were barred under the Mormon Doctrine. Id. 7 – 9.

98. NBD Bank stated the rule that, "the Mormon Doctrine is premised upon the theory that tort law affords a remedy for loss occasioned by personal injuries or damage to one's property, but contract law and the Uniform Commercial Code offer the appropriate remedy for economic losses occasioned by diminished commercial expectations not coupled with injury to person to property". (citations omitted) "The proper test for distinguishing between recovery in tort and contract damages (economic losses) depends upon the nature of the defect and the manner in which the damage occurred". (citations omitted) NBD,1997 Ill. App. LEXIS 700, 8. See, also, Redarowicz v. Ohlendorf, 92 Ill.2d 171, 178, 1982 Ill LEXIS 323, 441 N.E. 2d 325, 327 (Ill. 1982) (distinguishing between the economic loss of replacing inadequate masonry in a home from potential liability had a member of plaintiff's family been struck by a loose brick.)

99. The NBD Bank Court emphasized that the petroleum release in question had occurred over a long period of time. The plaintiffs in NBD had closed on the real estate sales contract in August,1986, and it was late 1990 when plaintiff's discovered contamination in the ground soil, possibly from a petroleum based substance from ruptured underground storage tanks. NBD, 1997 Ill. App. LEXIS 700, 10.

100. The NBD Bank Court stated, **"in the instant case, the damage alleged by plaintiff's was certainly caused by gradual deterioration, internal breakage, or other nonaccidental causes, rather than a sudden or dangerous event."** 1997 Ill. App. LEXIS 700, 9-10. (emphasis supplied) The facts in the case at bar are completely opposite from those found in NBD Bank.

101. Finally, the NBD Bank Court ruled that plaintiff's IEPA claim was in direct conflict with the public policy which supports the free and unhindered sale of real estate. The public policy promoting the free alienation of real property, "would be severely undermined if vendors were to be held liable in tort for economic losses resulting after they sold their interest to another party." NBD, 1997 Ill. App. LEXIS 700, 13, 14. Unlike plaintiff in the case at bar, plaintiff in NBD was not claiming an express or implied private right of action under LUST.

102. Further factual and legal differences between NBD Bank and the case at bar are obvious and do not bear repeating. Plaintiff, in the case at bar, agrees that the Act was not intended to adjudicate claims between sellers and purchasers of a real estate transaction.

103. However, the NBD Bank case did rely, in part, on Sawyer Realty Group, Inc., v. Jarvis Corporation, 89 Ill. 2d 379, 388, 1982 Ill. LEXIS 239, 432 N.E.2d 849.

Sawyer supports plaintiff's alternative theory of an implied private right of action under the Illinois EPA, as will be shown infra.

B. SUBJECT MATTER JURISDICTION; EXHAUSTION OF ADMINISTRATIVE REMEDIES; THE FIORINI, BROCKMAN, AND N L INDUSTRIES ILLINOIS SUPREME COURT TRILOGY

104. The cases of People v. Fiorini, 1991 Ill. LEXIS 39, 143 Ill. 2d 318, 574 N.E.2d 616 People v. Brockman, 143 Ill. 2d 351, 574 N.E.2d 626 (1991) and People v. N L Industries, 1992 Ill. LEXIS 191, 152 Ill. 2d 82, 604 N.E.2d 349, (1992) (with the exception of N L Industries,) are cited and discussed in NBD, and Ex. #57, Plaintiff's MPOL, p. 4, 5, 11. NBD Bank did not rely on them as they did not apply to the facts found in that case.

105. In People v. Fiorini, 143 Ill. 2d 318, 1991 Ill. LEXIS 39, 574 N.E.2d 616, the Attorney General had filed an action in the Circuit Court of LaSalle County, for injunctive relief against the owners of a dump site. On the same day Fiorini was decided the Illinois Supreme Court also decided People v. Brockman, 1991 Ill. LEXIS 38, 143 Ill. 2d 351. In Brockman the State filed, again, in the Circuit Court of LaSalle County, a lawsuit against the owners/operators of a landfill for violations of the Act.

106. In Fiorini and Brockman, both of which address substantially the same issue, the Court considered the question of whether a third-party complaint for injunctive relief and cost recovery, filed by a private party, can proceed in the Circuit Court where the third party plaintiff failed to exhaust its administrative remedies (i.e., failed to proceed before the Illinois Pollution Control Board). Ruling that the private third-party action could proceed in the Circuit Court, the Court in Fiorini held:

> "as this Court stated in People ex. rel. Scott v. Janson (1974),..."concurrent jurisdiction exists in the Circuit Court and the proper administrative agency for actions alleging violations of the Act...in Janson we found that the

> legislature envisioned multiple remedies under the Act, both governmental and private...the Attorney General has the discretion to initiate actions in the Circuit Court, without regard to whether actions seeking administrative review have been brought before an Administrative Agency, where immediate danger to the public health might exist...
>
> In the instant case, the trial court had jurisdiction over the original action where the Attorney General filed the complaint in the circuit court. To require that a portion of the instant action be heard before the Pollution Control Board at this juncture will frustrate judicial economy and common sense...accordingly, we reject third-party defendants argument that the third-party complaint is barred since third-party plaintiffs failed to exhaust administrative remedies". Fiorini, 1991 LEXIS 39, 21, 22.

107. In Fiorini, one of the Counts against defendants was that they had not obtained the proper permit in operating their dump site. In the case at bar it is undisputed that the leaking UST, RUL A NORTH, was defective and not safe when defendant MPC twice transported, and then illegally deposited, petroleum into its unlicensed, "Red Tagged," UST. MPC failed to obtain the permit to allow it to transport and store petroleum, of any amount, in UST RUL A NORTH, in both November, 2016, and January, 2017, when it illegally transported and filled RUL A NORTH with petroleum.

108. A year and a half later, the Supreme Court, in People v. N L Industries, 1992 Ill. LEXIS 191, 152 Ill.2d 82, (1992), again addressed the issue of whether the Circuit Courts have jurisdiction to hear direct actions for alleged violations of the Act, filed without first exhausting administrative remedies.

109. In N L Industries, the Court considered whether the Circuit Court and the Illinois Pollution Control Board had concurrent jurisdiction to hear not only injunction actions, where immediate dangers to the public health might exist, (which had already been decided in Janson and Fiorini), but also to hear cost recovery actions for corrective actions taken. The N L Court ruled:

> "The first issue for our consideration is whether the Circuit Court and the Board have concurrent jurisdiction to hear cost recovery actions. The Circuit Court and the Appellate Court both held that the Board had, "primary and exclusive", jurisdiction in cases where there is a violation of the Act and that the State cannot proceed in the Circuit Court until all administrative remedies have been exhausted. Therefore, the Complaint was properly dismissed." 1992 Ill. LEXIS 191, 15, 16.

110. The N L Industries Court reversed both the trial and appellate court. After a lengthy, and informative, discussion about the difference between "primary" and "exclusive" jurisdiction, the NL Industries Court concluded that the two terms are mutually exclusive; "an administrative agency may have primary jurisdiction over an issue, or it may have exclusive jurisdiction, but it cannot have both." 1992 IL LEXIS 1991, 18.

111. The N L Industries Court ruled:

> "The statutory language and the related policy concerns lead us to conclude that the Circuit Court should be vested with concurrent jurisdiction to hear cost recovery actions (brought under the IEPA). Therefore, it was not necessary for the State to have exhausted its administrative remedies before filing suit in the Circuit Court". 1992 Ill. LEXIS 191, 25-26.

112. In the case at bar this is exactly what happened. The Attorney General's office filed it's action in the Circuit Court of DuPage County, on November 3, 2017, not with the Illinois Pollution Control Board. Defendant Speedway did not object to the DuPage Circuit Court's jurisdiction. Any claims made by defendants that the Circuit Court of Cook County is either not competent, or not permitted, to hear this cause of action, at this point in time, is illogical and ignores the teachings of Fiorini, Brockman, and N L Industries.

113. The N L Industries Court, ruled unequivocally, that, "the Circuit Court should be vested with concurrent jurisdiction to hear cost recovery actions." 1992 Ill. LEXIS 191, 25. With no distinction being made between State and private actions, the ruling stands for the proposition that original private cost recovery actions in the Circuit Courts are

appropriate under the Act. Indeed, since 1992, both individuals and corporations, like MPC, acting as private citizens, have routinely brought cost recovery or remedial actions under LUST. If eligible, they can, and do, assess the UST Fund for reimbursement of corrective or remedial actions they have taken.

114. LUST was enacted in 1993, a year after N L Industries was decided. Indeed, the statutes cited supra, Section IV p. 5, relating to UST's, routinely refer to the Circuit Courts jurisdiction to enter judgments and orders concerning bodily injuries relating to leaking UST's.

115. In the present case MPC is the party defendant most responsible for creating the chaotic events of October 20, 2017, by transporting and illegally storing petroleum in a UST, which had, since at least, November, 2016, been found to be defective and not able to safely store petroleum, in any amount.

VIII. PENALTIES/DAMAGES

116. Defendants, by raising the issue of damages, acknowledge the relevancy of 415 ILCS 5/42(h) to the case at bar. It has always been plaintiff's position that the 5/42(h)(1)-(8) damage factors are part and parcel of the IEPA and LUST.

117. Defendant's argument that plaintiff's damages are confined to injunctive relief is not supported by any statute or caselaw. LUST penalties/damages are all governed 415 ILCS 5/42(h), and applicable caselaw.

118. The Act has always had a separate Article titled, "Penalties." See, Article XI "Penalties," 415 ILCS 5/42. Violators of the other articles of the Act, e.g. Article XVI, LUST, are subject to the mandates found throughout 5/42.

119. Another unique aspect of the Act, and LUST, is the fact that since September, 1990, when 415 ILCS 5/42(h)(1)-(8) was enacted, the trier of fact is authorized to consider the eight factors found in 5/42(h)(1)-(8) when assessing damages.

120. 415 ILCS 5/42(i) allows for evidence of mitigation of damages.

121. The cases cited in Plaintiff's Ex. #57, MPOL, pages 13 – 20, 28, contain the express purposes and policies of penalties/damages under the Act and LUST which are relevant to Counts I, II, and III of Plaintiff's Amended Complaint.

122. Long before the enactment of 5/42(h)(1)-(8) one of the consistent considerations/purposes of the overall penalty scheme of the Act was, "punitive considerations," when violators of the Act were assessed penalties/damages.

123. It is well established Illinois caselaw that the IEPA's penalty statutory scheme has always been consistent in authorizing, "punitive considerations," to be considered by the trier of fact when assessing damages for violations of the Act. See, Ex. #57, Plaintiff's MPOL, p. 13 – 20.

A. 415 ILCS 5/42(h)(1)-(8)

124. Before the creation of 415 ILCS 5/42(h)(1)-(8), strict liability 5/22.2(f) and LUST, 5/57.1-19, the First District ruled:

> "**While the civil penalty is imposed not primarily for punitive considerations, but to aid in the enforcement of the Act, (citation omitted) this does not mean that a penalty can be imposed only to force the individual defendant to act. The assessment of penalties against recalcitrant defendants, who have not sought to comply with the Act voluntarily but who by their activities forced the Agency or private citizen to bring action against them may cause other violators to act promptly and not wait for the prodding of the Agency.**" Lloyd A. Fry Roofing Company v. Pollution Control Board, 46 Ill. App. 3d at 418-419, 1977 Ill. App. LEXIS 2269, 13-14, (1st Dist. 1977). (emphasis supplied)

125. The legislature revamped the law when they enacted 5/42(h)(1)-(8) in September, 1990.

126. In the seminal case of ESG Watts, Inc. v. Pollution Control Board, 1996 Ill. App. LEXIS 608, 282 Ill. App. 3d 43 (4th Dist. 1996) the Court noted the change that 42(h) represented to damage calculations under the Act and held:

> "Illinois Courts often state that the primary purpose of civil penalties is to aid in the enforcement of the Act, and punitive considerations are secondary. (citations omitted) **Some decisions which predate Section 42(h) seem to suggest that whenever compliance has been achieved, punishment is unnecessary. (citations omitted) However, it is now clear from the Section 42(h) factors that the deterrent effect of penalties on the violator and potential violators is a legitimate goal for the Board to consider when imposing penalties.**" Watts, 1996 Ill. App. LEXIS 608, 16-18. (emphasis supplied)

127. In the case at bar plaintiff, being a person under the Act, and suffering a bodily injury as defined under the Act and LUST, is entitled to have the trier of fact/jury be instructed that they are authorized to consider the eight 42(h) factors when assessing plaintiff's damages.

128. In People ex. rel. Ryan v. McHenry Shores Water Company, 1998 Ill. App. LEXIS 184, 295 Ill. App. 3d 628, (2d Dist. 1998), in affirming the trial courts' imposition of penalties, the Court noted, "A review of the record in the instant case reveals that the trial court considered the factors set forth in §42(h). The trial court specifically cited the first four factors as the basis for its decision as to the final penalty amount. The Ryan Court **specifically emphasized the fourth 42(h) factor, concerning the need to deter further violations by EPA violators and to otherwise aid in enhancing voluntary compliance with the Act by the violators and others similarly situated.** Ryan, 1998 Ill. App. LEXIS, 184, 22. (emphasis supplied)

129. A plain reading of 5/42 lists the remedies/penalties/damages. To allow the trier of fact to be authorized to consider the eight factors in 42(h) only in corrective action/cost recovery actions, and not for indemnification/bodily injury actions would create more Equal Protection and Due Process concerns while perverting the intent behind 42(h).

130. There is no legitimate reason why cost recovery plaintiffs should be allowed to have the trier of fact/jury be instructed they are authorized to consider the eight 42(h) factors, but a plaintiff seeking bodily damages for the same petroleum release is denied the same instruction of the law when the trier of fact/jury assesses her damages, caused by the same leaking UST.

131. As the First District Court ruled in People ex. rel. Madigan v. J.T. Einoder, Inc., 2013 Ill. App. LEXIS 864, 2013 Ill. App. (1st) 113498, (affirmed in part, reversed in part, on unrelated grounds, 2015 Ill. 117193, 2015 Ill. LEXIS 324, (2015)). (See, Plaintiff's Ex. #57, MPOL, p. 19 – 20, par. 71 – 72.)

> "There is no requirement under the Act that penalties imposed bear a mathematical relationship to the net profits realized by virtue of the violations charged. Indeed, this approach could encourage potential violators to simply factor in the estimated penalty to the cost of doing business, thus defeating the dual purpose of the imposition of penalties, which is to punish violators and discourage other similarly situated parties from engaging in prohibited conduct. If defendants wanted the trial court to consider evidence that net profits were substantially less than the reasonable estimate of gross profits provided by the State, nothing precluded defendants from presenting that evidence, which was readily available to them."
>
> **"Importantly, economic benefit is only one of many factors a trier of fact may look to when imposing fines. The other considerations, such as deterrence, self-disclosure of violations, and the duration of violations, do not have an easily calculable monetary value.** The trial court could properly have reasoned that defendants' continued the operations for five years after receiving violation notices from the Agency

necessitated particularly severe penalties in order to deter future violators from engaging in similar conduct." 2013 Ill. App. LEXIS 864, 41-42.

132. On a practical level, why would LUST, and the statutes promulgating it, (as shown in Section IV. supra, p. 5) further punish a citizen by denying her access to the LUST Fund, and the benefits of LUST laws, paid for with her taxes, while allowing out of State defendants like MPC/Speedway the benefits of the same laws and Fund? This is an additional issue defendants need to address. Why can defendant utilize the LUST laws to their benefit but should be denied the same benefits?

B. DEFENDANT'S MULTIPLE LUST VIOLATIONS

133. Another notable fact of the case at bar is the sheer number, literally hundreds, of Non-compliance misdemeanor violations, all created by defendant MPC illegally filling to maximum capacity, RUL A NORTH with over eight (8) thousand gallons of petroleum in November, 2016, and topping it off at 9816 gallons in January, 2017. This was done while RUL A NORTH was "Red Tagged," not in service, and not allowed to contain any petroleum. Indeed, defendant Speedway had already taken RUL A NORTH out of service before any deliveries of petroleum by defendant MPC into MPC's defective UST, RUL A NORTH, in November, 2016.

134. Research reveals no case with the number of violations as are present in the case at bar, as shown in plaintiff's Complaint Counts I, II, and III. The felonies shown are telling as they are the start of the cover-up regarding RUL A NORTH's true contents on October 20, 2017. See, Plaintiff's Complaint, p. 63 – 66.

135. Rather than furthering the Acts' goals of voluntary self-disclosure of noncompliance and early reporting of potential harm, all defendants have actively

engaged in acts of non-disclosure, noncompliance, concealment and destruction of documents, as shown in Plaintiff's Complaint, page 63-66.

136. Defendants have never produced any evidence to refute the facts stated in Plaintiff's Complaint, and corroborating exhibits, regarding the hundreds of LUST violations by each of the defendants as stated in Plaintiff's Complaint. See, Plaintiff's Complaint, p. 41 – 74.

137. Defendant's forced compliance does not excuse their multitude of LUST violations.

138. This case is unique by the egregious conduct of all defendants in their total disregard for environmental and public safety, and their active fraud on OSFM, and then the taxpayers of Illinois.

139. The LUST violations stated in plaintiff's Complaint have never been adjudicated by any trier of fact. No trier of fact, after having considered all violations as shown in plaintiff's Complaint, has ever assessed damages pursuant to 5/42(h)(1)-(8).

140. A trier of fact/jury hearing the evidence in this case, and rendering a verdict based upon the eight 5/42(h) factors, will likely return a substantial verdict. This would further the Act's goals of voluntary self disclosure of non-noncompliance and early warning of potential harm. A large verdict would also further the legitimate goals of the Act to aid in the enforcement of the Act and have a deterrent effect on defendant's future conduct, as well as on similarly situated potential violators of UST laws.

141. A substantial damage award would certainly aid in the enforcement of the Act and LUST. It would encourage voluntary disclosure of noncompliance and early reporting of possible or potential problems with UST's. A large verdict would spur defendant, and others like defendants, to obey the LUST laws. It would also further the

Act's secondary purpose of imposing damages on a violator based on the punitive considerations found in 42(h).

142. It is only through a trial of plaintiff's express, or implied, private right of action under LUST that defendants would be subject to any type of damages/remedies for their long standing noncompliance and nondisclosure of their violations of environmental safety and public safety laws leading up to the fires and explosions of October 20, 2017. Defendants continued non-compliance and nondisclosure led to the State filing suit in November, 2017. Defendants, in September, 2018, then committed theft of the LUST Fund.

143. The noncompliance in regards to UST 113 RUL A NORTH, began in August, 2016, as stated in Plaintiff's Complaint. See, Complaint, p. 60 – 62. MPC/Speedway's violations of LUST continued through at least, December, 2018, by seeking LUST Funds they were not eligible to apply for, or receive, in relation to the petroleum release that caused plaintiff's injuries/burns on October 20, 2017.

C. IPI 60.01 and Davis v. Marathon Oil Company

144. Defendant's claim that it is somehow impermissible, or, "in poor taste," to reference the defendants' violations of LUST and related laws. See, Motion to Dismiss, p. 9.

145. Initially, plaintiff directs defendants to **IPI 60.01, "Violation of Statute, Ordinance, or Administrative Regulations"**. 60.01 makes clear that the trier of fact hearing the case at bar will be instructed as to the hundreds of violations committed by each of the three defendants, both misdemeanors and felonies.

146. In the seminal case of Davis v. Marathon Oil Company, 1976 Ill. LEXIS 383, 14, 17, 64 Ill. 2d 380, (1976) the Court specifically held that the environmental regulations

adopted, through what is now known as the Gasoline Storage Act, should have been given to the jury. Davis, 1976 Ill. LEXIS 383, 8, 9. The Gasoline Storage Act today administers the State of Illinois Underground Storage Tank Program.

147. At the conclusion of trial, all of the relevant LUST statutes, regulations, and rules stated in Plaintiff's Complaint will be published to the trier of fact by the trial judge. All are intended to protect against bodily injury/burns due to leaking UST's. They are safety statutes that the jury will consider pursuant to IPI 60.01.

D. THE COVER UP

148. On or about August 19, 2017, and again on or about October 5, 2017, OSFM employee Mary Torricelli inquired of defendant Speedway personnel regarding the specific status of UST RUL A NORTH (a/k/a OSFM Tank #1) and, "other discrepancies," found at Speedway Station #7445. MPC/Speedway's response? None. This was just the beginning of their active non-compliance and concealment concerning the contents of UST RUL A NORTH. See, Plaintiff's Ex. #52 Mary Torricelli, emails of August 19, 2017 and October 5, 2017, 10 pages.

149. No MPC/Speedway personnel ever informed OSFM that RUL A NORTH was illegally storing petroleum in either 2016 or 2017. Rather, they attempted to conceal it, even after the explosions and fires of October 20, 2017.

150. Defendant Speedway had officially and legally taken the "Red Tagged" UST RUL A NORTH out of service on November 7, 2016. It was never officially and legally put back into service. The Red Tag was never removed by the OSFM as the law requires.

151. The second act of the cover-up occurred on October 20, 2017, after the fires and explosions, when the OSFM requested accurate records regarding the contents of all the UST's at Store #7445. Defendant MPC/Speedway intentionally concealed

critical information about the contents of RUL A NORTH. See, Ex. #50, OSFM e-mail with "Shift Report," 2 pages and Plaintiff's Complaint, p. 64 – 66.

152. The legislature has specifically designated that providing false information about UST data under LUST is a Class Four felony. See, 415 ILCS 5/44(h)(4.5) and Complaint, p. 64, par. 335. This act of noncompliance, nondisclosure, concealment/covering up data, and producing false records to the OSFM on October 20, 2017, coupled with the fact that defendants violated every environmental safety rule concerning early reporting of releases, are facts the jury should consider in assessing damages under 42(h)(1)-(8).

153. The third act of concealment/cover-up also occurred on October 20, 2017, when the DVR machine, which contained all of the information on the operation of Store #7445, including security video tape footage of the inside and outside areas of Store #7445, was removed before it could be examined by authorities. See, Plaintiff's Ex. #58, Darryl Crosby record, p. 3. (The green highlighted marks are on the original.)

154. As stated in Plaintiff's Complaint, the ignorance of UST laws shown by Speedway employees, beginning with manager, defendant Manoj Valiathara, are additional matters that the trier of fact should consider when assessing damages in the case at bar. Defendant's "ignorance" of the LUST laws is not a defense but an aggravating factor in assessing damages. See, Plaintiff's Complaint, Count III, page 119.

E. SCR 214 VIOLATION

155. Pursuant to SCR 214, defendants' filed with the Court false, clearly altered, ATG/Veeder Root data records critical to this case. See, Plaintiff's Ex. #19, October 11, 2017, - October 23, 2017, ATG records.

156. As the Court can see, the ATG/Veeder Root data shows UST RUL A NORTH is not even physically present in the UST System on October 20, 2017. (emphasis supplied) The records produced show RUL A NORTH present on October 10th, 11th, 2017, p. 2, 3; missing on October 20, 2017, page 4; and then magically reappears October 23, 2017, p. 1. Defendants need to answer how this happened. Why was RUL A NORTH erased from the ATG data? Why did defendant's representatives continue defendant's non-compliance and nondisclosure to cover-up the contents of RUL A NORTH on October 20, 2017? While not a felony, defendant's 214 response, on a critical piece of evidence, which is clearly altered, is a cover-up and fraud on the Court. See, Plaintiff's Ex. #19.

157. Defendants' need to explain to the Court how is it possible that (1) the subject UST, RUL A NORTH, is apparently still present on October 19, 2017, (2) then completely disappears from the shift report for October 20, 2017, and then (3) mysteriously reappears on October 21, 2017. See, Plaintiff's Ex. #19. (4) How, and why, did this cover-up take place? (5) Why did defendant's representatives commit the fraud on OSFM as shown in Ex. #50, and then, the Court, as shown in Ex. #19?

158. It is obvious that the "Shift Report" provided to the OSFM on October 20, 2017, by defendant's employee(s) regarding the contents of UST RUL A NORTH is altered, with the water level and volume measurements missing on the October 20, 2017, report. See, Plaintiff's Ex. #50. The same report, produced pursuant to SCR 214, has the entire UST missing. (emphasis added) Defendants, through their respresentatives, merely took the cover-up to a new level in their 214 response.

159. Mitch Oliver, a retired Speedway employee, recently gave his deposition. He was part of the investigative team that came to Illinois immediately after the fires and

explosions of October 20, 2017. He admitted that both shift reports, "looked different". He had no explanation for the obvious outright concealment of the information concerning RUL A NORTH. Plaintiff's Ex. #E Deposition transcript of Mitch Oliver taken June 1, 2021, p. 10-13, 172-179.

160. Mr. Oliver also testified to meetings he had upon his arrival, and during his stay, in Illinois, with other investigative team members. It was his understanding that the investigative team was led by defendants' attorney Athan A. Virolas from Ohio. Attorneys Thomas Crawford and Joseph Sullivan from Litchfield Cavo were part of the investigative team. They discussed the UST's contents. Ex. #E, p. 17-20, 29, 55-56. 117, 127-133.

161. Mr. Oliver also corroborated the fact that defendants, on September 10, 2018, applied through the LUST Fund for recovery cost reimbursement in the amount of $222,866.10. See, Plaintiff's Ex. #228. Ex. #E, p. 151-155, 159-160.

IX. IMPLIED PRIVATE RIGHT OF ACTION UNDER LUST

162. If the Court does not feel the express legislative intent shown in the applicable statutes in Section IV, p. 5, supra, does not provide plaintiff with an express private right of action under LUST for bodily injury due to the release of petroleum from a UST, then plaintiff claims, in the alternative, that she has an "implied" private right of action under LUST.

A. SAWYER REALTY GROUP CASE

163. In Sawyer Realty Group, Inc. v. Jarvis Corporation, 1982 Ill. LEXIS 239, 89 Ill.2d 379, a case somewhat analogous to the present case at bar, the Supreme Court held that because the injury claimed was one the statute was designed to prevent, implication of a civil private right of action was necessary to provide an effective remedy

to prevent any future self-serving and fraudulent practices that the Real Estate Brokers and Salesmen License Act sought to prevent.

164. In Sawyer, plaintiff, a real estate agency, filed suit with various counts, including a count based on an alleged violation of the Real Estate Brokers and Salesmen License Act. (hereafter "Brokers Act") Plaintiff, in one of their Counts requested the Count to find an implied private right of action based upon the Brokers Act.

165. Plaintiff claimed the Act was violated when defendants reneged on a real estate transaction, and were fraudulent and dishonest in doing so. The plaintiffs claimed that defendants conduct violated the rules and regulations promulgated in implementing the Brokers Act by the Illinois Department of Registration and Education (hereafter "Dept") Sawyer, 1982 Ill. LEXIS 239, 2, 3.

166. In the case at bar LUST, and its regulations and rules are promulgated, in part, by OSFM. The Sawyer Court noted, "these rules were duly promulgated pursuant to statutory authority. As such they have the same force and effect as the statute". (citation omitted) Sawyer, 1982 LEXIS 239, 5.

167. "But whether the legislature intended to enforce those obligations through private litigation under any Section of this Act is a separate question" Sawyer, 1982 LEXIS 239, 8.

168. The Sawyer Court stated the long-established rule that, "it is clear that it is not necessary to show a specific legislative intent to create a private right of action. If there is no indication that the remedies available are only those the legislature expressed in the Act, then where it is consistent with the underlying purpose of the Act and necessary to achieve the aim of the legislation, a private right of action can be implied". 1982 Ill. LEXIS 239, 8.

169. Following the teachings of Kelsay v. Motorola, Inc., 1978 Ill. LEXIS 385, 74 Ill.2d 172, (other citations omitted), the Sawyer Court looked to the "totality of circumstances" in endeavoring to discover legislative intent.

The Sawyer Court ruled:

> "we agree with the plaintiff's assertion that when a statute is enacted to protect a particular class of individuals, Courts may imply a private cause of action for violation of that statute although no express remedy had been provided". The public policy underlying certain statutes demands implication of a private remedy to compensate an aggrieved individual belonging to that class of persons whom the statute was designed to protect." Id. at 9 (collects cases) (citations omitted)

170. The Sawyer Court also held, "consideration of the underlying policy of the legislation and the overriding purpose of each Act is important in determining if whether a private right of action exists absent specific statutory authority. In examining the public policy behind the Workmen Compensation Act, this Court implied a private right of action allowing a civil remedy for damages where an employer discharged an employee for exercising his Workmen Compensation Rights. This Court in Kelsay found it necessary to effectuate the purpose of the Workmen Compensation Act to imply a private right of action." Id. at 10, 11.

171. The Sawyer Court also recognized that the United States Supreme Court, "has determined that the key to the inquiry is legislative intent". Sawyer, 82 Ill. LEXIS 239, 11, (collect cases)

172. The Sawyer Court found the Preamble to the Brokers Licensing Act compelling. It reads, in full; "The intent of the legislature in enacting this statute is to evaluate the competency of persons engaged in the real estate business for the protection of the public". The Court held, "the plain purpose to is protect the public from incapable or dishonest persons who might aid in the perpetration of fraud by establishing

qualifying standards for salesmen and brokers. The Act is a remedial one, and it should be broadly construed". Sawyer, at 13, 14.

173. The Sawyer Court noted that, "the legislature also provided for certain private remedies. An aggrieved individual may file a complaint calling for an investigation by the Dept. It also provided that a private individual may bring an action to enjoin certain unlawful activities under the rules promulgated by the Brokers Act." Id. at 15.

174. Also, similar to LUST, the Brokers Act, "establishes a real estate recovery fund which may be used to compensate aggrieved persons who are otherwise unable to satisfy valid judgments against those registered real estate brokers and salesmen. "Because the legislature provided for departmental enforcement does not necessarily mean that they must not have intended to create a private right of action. Sawyer, at 15.

175. **"The existence of an express private remedy for indemnification of limited compensatory damages (up to $10,000.00 per aggrieved party for actual cash losses) indicates that the General Assembly considered that private civil actions for damages would be instituted for violations of this Act.** However, **we do not believe that the lack of any language creating a private right of action for compensatory damages under any section of the Act indicates that the General Assembly rejected such a remedy"**. (emphasis supplied) Sawyer, 1982 Ill. LEXIS 239, 15 – 16.

176. **"The potential imposition of a criminal penalty under the Workmen's Compensation Act did not preclude this Court from implying a private right of action in alleviating the plight of the plaintiff in Kelsay. The sanctions provided for in the Brokers Licensing Act are of no help to the plaintiffs here. The express remedies available to the Sawyer Realty Group are inadequate to redress the**

injuries the plaintiffs have sustained." (emphasis supplied) Sawyer, 1982 Ill. LEXIS 239, 17.

177. "**The plaintiffs were members of the class for whose benefit the statute was enacted. Implication of a private right is consistent with the underlying purpose of the Act. The plaintiff's injury is one the statute was designed to prevent. Implication of a civil private right of action for compensatory damages under the Brokers Licensing Act is necessary to provide an adequate remedy for self-serving, deceptive, and fraudulent practices of brokers of salesmen that the Act seeks to prevent. Given these circumstances we recognize an implied private right of action for damages".** (emphasis supplied) Sawyer, 1982 Ill. LEXIS 239, 17. Id. at 10, 17.

178. If the Brokers Act in Sawyer created an "implied" right of action for private plaintiff's then LUST surely does.

179. If the Preamble to the Brokers Licensing Act created a private right of action under that Act, then why wouldn't the Preamble to the Illinois Environmental Protection Act, standing alone, also allow a private cause of action for plaintiff? Comparing them, it is clear the IEPA Preamble provides an express private right of action for plaintiff.

180. Plaintiff's Amended Complaint, Counts I, II, and III are, in fact, expressly created by the legislature for plaintiff's benefit. The rules, regulations, and statutes concerning UST's found in Plaintiff's Complaint are borne of LUST, which was created by the legislature. See, Plaintiff's Ex. #55 and #56, (ISBA Articles).

181. In the case at bar the plain language of the LUST Indemnification clause, standing alone, if not clearly creating an express private right of action for plaintiff, shows, at a minimum, a legislative intent to provide an "implied" private right of action for violations of LUST as alleged in Counts I, II, and III of Plaintiff's Amended Complaint.

B. ARTICLE XI, ILLINOIS CONSTITUTION AND IEPA PREAMBLE

182. This Court can take judicial notice of the fact that the Illinois Constitution, Article XI, "Environment", §2 is titled, "Rights of Individuals".

183. While Article XI, Section 2 does not create a separate cause of action itself it does give standing to Illinois citizens such as plaintiff to bring a private right of action. The Preamble to the EPA makes clear that private right of actions, and private remedies, are permitted, if not encouraged.

184. It is also clear that the Illinois legislature has the authority under the Illinois EPA to create Acts such as Article XVI, Petroleum Underground Storage Tanks ("LUST").

185. The Preamble of the Illinois Environmental Protection Act, 15 ILCS 5/2, states, in relevant part:

> The General Assembly finds…
>
> (i) That environmental damage seriously endangers the public health and welfare, as more specifically described in later sections of this Act:
>
> (v) that in order to alleviate the burden on enforcement agencies, to assure that all interests are given a full hearing, and to increase public participation in protecting the environment, **private as well as governmental remedies must be provided**;
>
> (b) It is the purpose of this Act, as more specifically described in later sections, 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. (emphasis supplied)

186. There is no other similar Preamble found in any other Illinois law or statutory scheme. No other Preamble is as specific in granting private rights of action. A review of all statutory schemes enacted in the State of Illinois show that the Illinois Environmental Protection Act Preamble is unique. Defendants are invited to show otherwise.

C. OTHER IMPLIED PRIVATE RIGHT OF ACTION CASELAW

187. In the case People ex. rel. Department of Labor v. Valdivia, 2011 Ill. App. LEXIS 886, 2011 Ill App (2d) 100998, the Court made a comparison between the IEPA and the Prevailing Wage Act. In Valdivia, defendant, a subcontractor, sought contribution from the general contractor for violations of the Illinois Prevailing Wage Act, 820 ILCS 130. The Department of Labor ("Dept") alleged that defendant had violated the Prevailing Wage Act, which precipitated defendant filing a two-count third-party complaint against the general contractor seeking the full amount of any judgment entered against defendant and in favor of the Dept.

188. In upholding the trial courts dismissal of defendants third-party compliant seeking contribution the Valdivia Court had occasion to compare the Prevailing Wage Act with the Illinois Environmental Protection Act.

189. The Valdivia Court found that the Prevailing Wage Act, unlike the IEPA, is not an Act that was intended to protect human life and property that would allow a third-party contribution action. 2011 Ill. App. LEXIS 886, 15.

190. Defendant in Valdivia cited People v. Brockman, 1991 Ill. LEXIS 38, 143 Ill. 2d 358, in support of his argument for contribution. The Valdivia Court, interpreting Brockman and the Environmental Protection Act ruled,

> "Ultimately, the Supreme Court held that violation of the Environmental Protection Act could constitute liability in tort under the Contribution Act because, without question, third-party defendants had a duty not to contaminate the environment." Citing Brockman, 143, Ill. 2d at 372-73.
>
> **"The Courts' conclusion in Brockman that the Environmental Protection Act created a tort duty is consistent with the concept of a tort itself. Brockman**, like the cases mentioned above in which Courts found **statutory tort duties, involved the legislature's intent to prevent personal injury** or property damage, **specifically to prevent injury to persons and harm to the environment from hazardous substances.**

> See, Brockman, 143 Ill.2d at 375 (**noting that the purpose of the Environmental Protection Act is to impose liability on those who create a situation harmful to the environment**); 415 ILCS 5/2(a)(i) (stating the General Assembly finding that "environmental damage seriously endangers the public health and welfare)." Valdivia, 2011 Ill. App. LEXIS 886, 16, 2011 Ill App (2d) 100998 (emphasis supplied)

191. The Valdivia's Court interpretation of the EPA legislative intent mirrors that claimed by plaintiff in the case at bar.

192. In contrast, "the Prevailing Wage Act did not involve such concerns. Rather, the purpose of the Act is to ensure that workers on public work projects are paid a prevailing wage. Accordingly, Brockman is inapposite." Valdivia, 2011 Ill. App. LEXIS 886, 17.

193. Valdavia's teachings fully support plaintiff's contention that LUST provides her, if not an express, at least an "implied" cause of action under LUST and the statutes promulgated pursuant to it.

194. The Valdivia Court stated the long-established rule that, "a tort duty can derive either from the common law or from statute." (gives examples and collects cases) "A statute may expressly create a tort duty, or, a tort duty may be inferred from a statute intended to protect human life or property". Valdivia, 2011 Ill. App. LEXIS 886, 6 - 7.

195. In Rekosh v. Parks, 2000 Ill. App. LEXIS 725, 316 Ill. App. 3d 58 (2d Dist. 2000) the plaintiff sought private rights of action pursuant to both the Crematory Regulation Act, 410 ILCS 18/15, and the Funeral Directors and Embalmers Code,225 ILCS 41/1 et seq.

196. The Rekosh Court found an express private right of action under the former but did not find an implied right of action under the latter. 2000 Ill. App. LEXIS 725, 28, 33.

197. Plaintiffs in Rekosh were the children whose father's remains were cremated against their will. They claimed violations of both statutes. (The Rekosh, case reads like a sad story from the long ago "Family Feud TV," show.)

198. "Plaintiff's contended that the trial court erred in (1) dismissing their claim for negligent infliction of emotional distress; (2) dismissing their claim for intentional infliction of emotional distress; (3) dismissing their claim for interference with the right of the next of kin to possession and preservation of the body of the deceased; (4) failing to recognize an implied private cause of action under the Crematory Regulation Act; 410 ILCS 18/1 et seq. and (5) failing to recognize an implied cause of action under the Funeral Directors Embalmers Licensing Act. Rekosh, 2000 Ill. App. LEXIS 725, 2, 3.

199. Defendants in Rekosh argued there was no implied right of action under the Crematory Regulation Act. The Rekosh Court disagreed, holding:

> **"This is a case of first impression in Illinois. We are aware of no prior cases where a private right of action under the Act was examined. We find that the Act expressly provides a private right of action"** Rekosh, 2000 Ill. App LEXIS 725, 27. (emphasis supplied)

200. The Rekosh Court continued, "the construction of a statute is a question of law that is independently determined by a reviewing Court. Statutory interpretation involves giving effect to the underlying intent of the legislature. However, when the statutory language is clear and unambiguous, there is no need to turn to extrinsic construction aids." Id. at 27.

201. "Accordingly, we turn to the provisions in the Act that impute liability to a crematory authority that violates the Act. Section 20 of the Act provides:

> "There shall be no liability for crematory authority that cremates human remains according to an authorization, or that releases or disposes of the cremated remains according to an authorization, except for a crematory

> authority's gross negligence, provided that the crematory authority performs its functions in compliance with this Act. 410 ILCS 18/20(d)

Also, Section 45 of the Act provides:

> A crematory authority that has received an executed cremation authorization form that complies with paragraph (1) of Subsection (a) of Section 20 and has received any additional documentations required by such Section 20 shall not be liable for cremating the human remains designated by the cremation authorization form if the cremation is performed in accordance with this Act." 410 ILCS 18/45(a). Id. at 27.

202. The Rekosh Court ruled:

> **"Construing the plain meaning of the Act, we find that the Act clearly and ambiguously creates a private right of action. Plaintiff have alleged specific violations of the Act and that, as a result they have suffered severe emotional distress. These allegations are sufficient to state a cause of action under the Act.** et seq. Accordingly, we hold that the trial court errored in dismissing Count IV of Plaintiff's Complaint." Rekosh, 2000 Ill. App. LEXIS 725, 27, 28.

203. In Totty v. Anderson Funeral Home, Ltd., 448 F. Supp. 3d 928, 2020 U.S. Dist. LEXIS 51188, the Court, following Rekosh, stated federal courts are bound to state court precedents in interpreting state law. (citation omitted.) 2020 U.S. Dist. LEXIS 51188, 6. The Totty Court, recognizing plaintiff's private right of action under the Crematory Act, ruled:

> "This Court finds no reason why Rekosh should not control here. Anderson Funeral argues that the Rekosh decision is "conclusory and devoid of any meaningful analysis" and "ignored the fact that the Illinois Comptroller is the only person expressly granted a right to purse a cause of action under the Act." This is not convincing. The **Rekosh court acknowledged the issue of** whether a private right of action under the Crematory Act **was one of first impression, applied statutory construction principles, analyzed the language of the Act, and found the plain meaning** of the Act **provided a private right of action. In addition,** Anderson Funeral **has not pointed to any authority showing that the Illinois Supreme Court would decide the issue differently.**" Totty, 2020 U.S. Dist. LEXIS 51188, 6, 7. (emphasis supplied)

204. Based on the above cases it is hard to imagine how the legislature did not intend at least an implied private right of action under LUST for people who suffer bodily injuries as a result of leaking UST's.

205. In Corgan v. Muehling, 1991 Ill. LEXIS 42, 143 Ill. 2d 296, the Court held when a statute is enacted for the protection of a particular class of individuals, a violation of its terms may result in civil as well as criminal liability, even though the former remedy is not specifically mentioned in the statutory scheme.

206. Plaintiff in Corgan filed suit against her psychologist for negligent infliction of emotional distress and also for a violation of the Psychologist Registration Act. Even though the Act did not specifically authorize a private right of action for people harmed by violation of the statute, but provided administrative and criminal measures, the Corgan Court, relying on Sawyer Realty Group, Inc. v. Jarvis Corporation, 89 Ill. 2d 379, 1982 Ill. LEXIS 239, 432 N.E.2d 849 held:

> "A civil private right of action for compensatory damages is necessary to uphold and implement the public policy behind Section 26 of the Psychologist Registration Act, to protect the public from persons who are incompetent and unqualified to render psychological services. It is unlikely that patients, injured by unqualified and unregistered psychologist, will initiate or pursue their complaints to the administrative or criminal justice system without a potential for a tangible reward. A private right of action under the Psychologist Registration Act is the only way that an aggrieved plaintiff can be made whole, when a defendant fails to comply with the provisions of the Act." Id., 1991 Ill. LEXIS 42, 29 – 30.

Accord, Rodgers v. St. Mary's Hospital, 1992 Ill. LEXIS 100, 8 – 10, 149 Ill. 2d 302 (plaintiff had a private right of action under the Illinois X-ray Retention Act when hospital lost X-ray film). Under any of the above cases, plaintiff, under LUST, has, at a minimum, an "implied" private right of action under LUST. See also, Pilotto v. Urban Outfitters West,

LLC., 2017 Ill. App. LEXIS 48, 2017 Ill. App. (1st) 160844, (finding an implied private right of action under the Restroom Access Act, 410 ILCS 39/10.)

X. FEDERAL CASE LAW

207. The Supreme Court, in Friends of the Earth, Inc. v. Laidlaw Environmental Services, Inc., 2000 U.S. LEXIS 501, 528 U.S. 167, 120 S. Ct. 693, address many of defendant's issues on the Federal level. The FOE Court stated, "This case presents an important question concerning the operation of the citizen-suit provisions of the Clean Water Act." Id. at 13.

208. In Friends of the Earth (hereafter "FOE") the Court held that a private environmental group's private claims for Civil Penalties against the owner of a hazardous waste facility under § 505(a) of the Federal Clean Water Act (33 USCS 1365(a)) were not necessarily mooted by defendant's compliance with the permit, or by closing the facility in question that was possibly causing the pollution. 2000 U.S. LEXI 501, 15.

209. In FOE the plaintiff had notified defendant of their intention to file a citizen suit pursuant to the Clean Water Act after the expiration of their requisite 60-day notice. In the interim, defendant reached an agreement, on the last day before FOE's 60-day notice expired, with the South Caroline Department of Health Environmental Control, (hereafter "Dept") where defendant paid $100,000.00 in Civil Penalties and pledged to make, "every effort," to comply with permit regulation obligations in the operation of its waste water treatment plant. Id. at 19, 20.

210. Shortly thereafter FOE filed its citizen suit against defendant alleging noncompliance with the government issued waste water permit. FOE sought declaratory relief, injunctive relief, as well as an award of civil penalties. The District Court hearing the case denied defendant's Laidlaw's Motion to Dismiss on the ground that the citizen

suit was barred due to the prior action against Laidlaw by the Dept. The District Court found that plaintiff's had standing. It also awarded a civil penalty in the amount of $405,008.00 to plaintiffs. The District Court found that the judgments, "total deterrent effect", would be adequate to forestall future violations. The Court also noted that Laidlaw would have to reimburse plaintiffs for a, "significant amount of legal fees and for significant legal expenses". FOE, 200 U.S. LEXIS 501, 23.

211. Plaintiff had Article III standing to bring the citizen suit as plaintiff's were able to show, "injury in fact, causation, and redressability". Id. at 28, 41.

212. The FOE Court ruled, "the relevant showing for Article III standing is not injury to the environment, but injury to the plaintiff. Id. at 28. The FOE members affidavits and depositions concerning how the discharges affected their recreational, aesthetic, and/or economic interest was enough for standing. 2000 U.S. LEXIS 501, 30, 34.

213. Next, the FOE Court rejected defendant's argument that plaintiffs lacked standing to seek civil remedies like the government because such penalties, "offer no redress to citizen plaintiffs." Id. at 34.

214. The FOE Court held that plaintiff's civil penalties claim did not automatically become moot once the company came into substantial compliance with its permit. "The standard for determining whether a case has been mooted by the defendants voluntary conduct is stringent: a case might become moot if subsequent events make it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." 2000 U.S. LEXIS 501, 38, 41.

215. In the case at bar there is little question that defendants MPC/Speedway could reasonably be expected to repeat their behavior as stated in plaintiff's Complaint.

216. Additionally, in the case at bar defendants conduct in finally taking corrective action, after the fires and explosions, was not voluntary, but ordered by the OSFM.

217. Defendants are required to prove and make it, "absolutely clear that violations could not reasonably be expected to recur". "These are disputed factual matters." Foe, 2000 U.S. LEXIS 501, 41. The FOE Court made clear that a defendant's compliance with its permit, "after the commencement of litigation does not moot claims for civil penalties under the Clean Water Act. For standing purposes the focus is properly on injury to the plaintiff. FOE, 2000 U.S. LEXIS 501, 27, 41.

218. The FOE Court held, "a sanction that effectively abates that conduct and prevents its recurrence provides a form of redress. Civil penalties can fit that description. To the extent that they encourage defendants to discontinue current violations and deter them from committing future ones, they afford redress to citizen plaintiffs who are injured or threatened with injury as a consequence of ongoing unlawful conduct." FOE at 36.

219. The FOE Court further ruled, "that all civil penalties have some deterrent effect. Congress has found that civil penalties in Clean Water Act cases do more than promote immediate compliance by limiting the defendant's economic incentive to delay its attainment of permit limits; they also deter future violations. This Congressional determination warrants judicial attention and respect", for violations of the Clean Water Act. "Congress wanted the District Court to consider the need for retribution and deterrence, in addition to restitution, when it imposed civil penalties. Plaintiff is proper to, "seek to deter future violations by basing the penalty on its economic impact". Id. at 35.

220. "The dissent argues that it is the availability rather than the imposition of civil penalties that deters any particular polluter from continuing to pollute. This argument

misses the mark in two ways. First, it overlooks the interdependence of the availability and the imposition, a threat has no deterrent value unless it is credible that it would be carried out. Second, it is reasonable for Congress to conclude that an actual award of civil penalties does in fact bring with it a significant quantum of deterrence over and above what is achieved by the mere prospect of such penalties. A would be polluter may or may not be dissuaded by the existence of a remedy on the books, but the defendant once hit in its pocket book would surely think twice before polluting again". FOE, 2000 U.S. LEXIS 501, 36, 37.

221. The FOE decision refutes defendants claims that plaintiff can only seek injunctive relief and that defendants have somehow absolved themselves by paying a $75,000.00 fine and complying with a consent order for their Clean Water and other non-LUST violations as stated in the State of Illinois Complaint.

222. Indeed, the FOE Court further ruled, "denial of injunctive relief does not necessarily mean that the District Court has concluded there is no prospect of future violations for civil penalties to deter. Indeed, it meant no such thing in this case. **The District Court denied injunctive relief, but expressly based its award of civil penalties on the need for deterrence.** FOE 2000 U.S. LEXIS 501, 48. (emphasis supplied)

223. Dydio v. Heston Corp., 1995 U.S. Dist. LEXIS 7061, 887 F. Supp. 1037 (N.D. Ill. 1995) is also instructive. In Dydio plaintiff brought a citizen suit against defendant corporation under Federal UST laws claiming that defendant was responsible for petroleum contamination resulting from underground storage tanks located on the property. The plaintiff had bought the property in 1985 and claimed that the UST's had been placed in the ground, abandoned, and not used since July 10, 1975. In July of 1994,

19 years later, the UST's were determined to be leaking petroleum products. Plaintiff sought declaratory relief, an order directing defendant to undertake corrective action, and fines in the amount of $50,000.00 per day for each day defendant violated the applicable Federal UST laws, as well as his attorneys fees' and expenses. Defendant filed a motion to dismiss claiming that (1) plaintiff's claims were based on wholly past violations, (2) that the Illinois UST program superseded the Federal UST programs, (3) that petroleum is not a solid or hazardous waste, but rather a useful product regulated only by Federal law, and (4) that plaintiff was seeking civil penalties in excess of those authorized by Federal Law. Dydio, 1995 U.S. Dist. LEXIS 7061, 2 – 3.

224. The Dydio Court rejected defendants claim that Illinois UST laws superseded Federal laws. State laws may not be less stringent than Federal laws, but may be more stringent. The Dydio Court also rejected defendants claim that plaintiff could not bring a citizen suit for wholly past violations of the UST regulations relating to UST releases. Dydio, 1995 US Dist. LEXIS 7061, 5 - 7.

225. The Dydio Court also held that petroleum may be defined as both a "hazardous waste," as well as a "regulated substance," under different federal laws. The Dydio Court noted, "the majority of Courts confronting the issue have concluded that petroleum is a solid waste and that a citizen suit may be brought under Subsection B against persons who have contributed to the handling, **storage, transportation**... etc. of petroleum in such a manner as to present an imminent and substantial endangerment to public health or the environment". (citation omitted) (collects cases) "Most, if not all of these courts, have reiterated and adopted the reasoning originally set out in Zands, (Zands v. Nelson, 779 F. Supp 1254), and today we join them and hold that leaking

petroleum is a solid or hazardous waste supporting the citizen suit under § 6972(a)(1b)." Dydio, 1995 U.S. Dist. 7061, 30, 31.

226. The Dydio Court acknowledged that petroleum is a useful product when properly stored and transferred to a consumer. The Dydio Court also observed, "it is equally clear however **that gasoline is no longer a useful product after it leaks into, and contaminates, the soil.** At this point, the gasoline cannot be re-used or recycled. As a result, it must be said that gasoline has been abandoned via the leakage (even if unintentional) into the soil. Indeed, the Court is of the opinion that by including the word "leaking" in its definition of the word "disposed" the statute incorporates this change in usefulness." 1995 U.S. Dist. LEXIS 7061, 33. (emphasis supplied)

227. While Dydio did not involve a personal injury due to a leaking underground storage tank, (and research reveals none on the Federal level), it is instructive in that it held that under the Federal UST laws leaking petroleum was a solid or hazardous waste supporting a citizen suit under Federal UST laws.

228. In the case at bar the petroleum release from Store #7445that eventually caused the explosion at plaintiff's home would be categorized as a contaminant, hazardous substance, and/or hazardous waste caused by the petroleum release.

229. Finally, in Mondry v. Speedway Super America, LLC., 1999 U.S. Dist. LEXIS 9095 (N.D. Ill), plaintiff in December, 1993 purchased a piece of property. Wanting to build her own tavern on the property, plaintiff, in January, 1995, received preliminary bank approval of a loan subject to a satisfactory environmental audit of the collateral property. The environmental reports found four leaking UST's within 0.14 miles, "approximately one city block," of plaintiff's property. Plaintiff filed suit under both Federal

UST laws and common law claims for nuisance and trespass. 1999 U.S. LEXIS 9095, 14-22.

230. The Mondry Court found, among its findings of fact, that the May, 1989, petroleum spill at defendant's gas station had contaminated plaintiff's property, which was discovered causing harm in February, 1995. Defendants' misguided attempts to blame others for the petroleum related contamination were unsuccessful. The Mondry Court noted of defendant's expert, "his conclusions defied the facts established by the record. The Court therefore discounts his testimony and rejects his conclusions". Id. at 20.

231. The Mondry Court also found that plaintiff was a person, "entitled to commence a civil action on her own behalf against the defendant," pursuant to the Federal UST laws. She also had standing to address any present or past, "waste handling that may present an imminent and substantial endangerment to health or the environment", pursuant to Federal law. 1999 U.S. Dist. LEXIS 9095, 20.

232. The Mondry Court ruled that the petroleum products released by defendant Speedway from its gas station were both contaminates and solid waste. Mondry, 1999 U.S. Dist. LEXIS 9095, 21.

233. It is worth noting that the Speedway defendants in Mondry stipulated that, "on July 10, 1989, Professional Tank Services, Ltd., reported to SSA (defendant) that tank system #1 closest to Mondry property **showed a leak rate of 1.4 gallons per hour (calling the leak, "a high rate of volume lost")**, failing the tank integrity test." 1999 U.S. Dist. 9095, 3. (emphasis supplied)

234. Obviously, in the case at bar the leak rate was far, far more than 1.4 gallons per hour. The Veeder Root/ATG System data at Gas Station #7445, as stated in Plaintiff's Complaint, are all true and accurate. See, Complaint, p. 17 – 23.

235. In the present case, at all relevant times, it is undisputed that the Veeder Root/ATG at Store #7445 was functioning properly, as intended, and recorded accurate UST data at all relevant times.

236. It is undisputed that the Veeder-Root/ATG Data clearly shows that the 9,816 gallons of petroleum present in RUL A NORTH/Tank #1, on October 1, 2017, had been replaced entirely by water no later than October 15, 2017.

237. Finally, the Mondry Court granted the relief plaintiff sought under the Federal UST laws. Defendant was ordered to abate the nuisance and trespass and comply with all Federal and State Environmental Laws and regulations in a timely fashion. Defendant Speedway was ordered to comply with Illinois Environmental Protection Agency requirements in remediating and employing a definitive corrective action plan. The monetary award under the State law common law counts was entered and continued to a later date. 1999 U. S. Dist. LEXIS 9095, 25.

238. Though all of the above cited Federal district court cases involve corrective and/or remedial action due to either confirmed petroleum contamination, or possible contamination, of the environment that has occurred or may occur in the future, none involved bodily injury as a result of a leaking UST. However, the above cases all affirmatively answer the question of whether a citizen has a cognizable private right of action for violations of the Federal EPA UST laws when their property has been harmed, damaged, or contaminated due to the alleged UST violations. See also, Aurora National Bank v. TriStar Marketing, Marathon Petroleum Company, et. al., 1998 U.S. Dist. LEXIS 472 (RCRA allows citizen suits for leaking UST's.)

239. What the above Federal District Court cases have in common is they involve leaking UST's and are based on the hazardous and solid waste amendments of 1984 of

the Resource Conservation and Recovery Act of 1976, (§ 6901 et seq.) ("RCRA".) LUST is based, in part, on RCRA.

240. In the case at bar the most recent environmental evaluation of the site of the release, Store #7445 Westmont, IL, on November 25, 2019, states the, "site is currently under investigation." This is more than 2 (two) years after the October 20, 2017, release. (See, Defendant's Ex. #D, attached.)

241. Using past history as a guide, MPC/Speedway is more than likely to continue engaging in the same outrageous conduct that led to the petroleum release in Westmont, IL on October 20, 2017. Indeed, MPC is consistent, as it was, and remains, one of the nation's greatest violators of our environmental laws. See, Plaintiff's Ex. #59, Violation Tracker Parent Company Summary, 4 pages.

XI. CONCLUSION/RELIEF REQUESTED

On October 20, 2017, Margaret L. Rice was a healthy, very active, completely independent 80-year old, leading a happy life. Her only error that day was doing her weekly laundry. Though she is a rare plaintiff, no reasonable person would ever foresee a leaking UST, a mile and a half from their home, causing their home to explode, with the heat from the blast causing extensive second degree burns over 10-15% of their body. LUST protects plaintiff, and, as shown, provides an express private right of action against the defendant's, owners/operators of the leaking UST.

Based on the facts of this case, the LUST statutory scheme, applicable caselaw, and public policy, plaintiff requests this Court deny defendant's Motion to Dismiss Plaintiff's Amended Complaint, Counts, I, II, and III. Plaintiff also requests a specific finding that she has an express private right of action for bodily injury under LUST for the

reasons stated above. In the alternative plaintiff requests a specific ruling that she has an implied right of action under LUST for the reasons stated above.

Respectfully Submitted,

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PLAINTIFF'S MEMORANDUM OF LAW ON WHETHER 415 ILCS 5/57.1-19 (LUST) PROVIDES A PRIVATE RIGHT OF ACTION FOR PLAINTIFF IN THE CASE AT BAR

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CHRONOLOGICAL ORDER OF EXHIBITS REFERENCED IN PLAINTIFF'S MEMORANDUM OF LAW ON WHETHER 415 ILCS 5/57.1-19 (LUST) PROVIDES A PRIVATE RIGHT OF ACTION FOR PLAINTIFF IN THE CASE AT BAR

1. Plaintiff's Ex. #57, Plaintiff's Motion for Punitive Damages by Operation of Law Pursuant to LUST;

2. Plaintiff's Ex. #228, September 10, 2018, certified mail letter to Illinois Environmental Protection Agency, Bureau of Land, Leaking UST Claims Unit from John L. Helms, Corporate Manager Environmental, Speedway Corporation, p. 1 - 20; December 1, 2017, letter from Office of Illinois State Fire Marshal to Speedway LLC. regarding additional reimbursement for costs associated with "Corrective Action", p. 21 – 26;

3. Ex. #52, Mary Torricelli, emails of August 19, 2017 and October 5, 2017, 10 pages;

4. Ex. #50, OSFM e-mail with "Shift Report," 2 pages;

5. Plaintiff's Ex. #58, Darryl Crosby record;

6. Plaintiff's Ex. #19, October 11, 2017, - October 23, 2017, ATG records.

7. Plaintiff's Ex. #E, Deposition transcript of Mitch Oliver;

8. Defendant's Ex. #D, NFR Inspection Evaluation Document; and

9. Plaintiff's Ex. #59, Violation Tracker Parent Company Summary, 4 pages.

RICE v. MARATHON PETROLEUM CORPORATION, et al.
Case No.: 18 L 000783

CHRONOLOGICAL ORDER OF STATUTES REFERENCED IN PLAINTIFF'S IN MEMORANDUM OF LAW ON WHETHER 415 ILCS 5/57.1-19 (LUST) PROVIDES A PRIVATE RIGHT OF ACTION FOR PLAINTIFF IN THE CASE AT BAR

1. 415 ILCS 5/57.2, Definitions
2. 415 ILCS 5/57 (LUST)
3. 415 ILCS 5/42(h)(1)-(8), (i)(1)-(9)
4. Gasoline Storage Act, 430 ILCS 15/4 (a)(e)
5. 35 Ill. Adm. Code §734.115
6. 41 Ill. Adm. Code §176.200
7. 415 ILCS 5/57.8(a)
8. 415 ILCS 5/57.8(c) (1) (2)
9. 415 ILCS 5/57.8(d) (1) (2) (3)
10. 415 ILCS 5/57.8(g)(1) (2)
11. 415 ILCS 5/57.8(h)
12. 35 Ill. Adm. Code §734.600
13. 35 Ill. Adm. Code §734.620
14. 35 Ill. Adm. Code §734.620(a)(1), (2)
15. 35 Ill. Adm. Code §734.645
16. 35 Ill. Adm. Code §734.650 (a)
17. 35 Ill. Adm. Code §734.650(B)(i)(ii)
18. 35 Ill. Adm. Code §734.650(b)(2)(3)(4)

19. 35 Ill. Adm. Code § 734.650(d)(2)(5)(7)
20. 35 Ill. Adm. Code § 734.630 (c)
21. Gasoline Storage Act, 430 ILCS 15/1
22. 430 ILCS 15/2
23. 430 ILCS 15/6.1(a)(b)
24. 41 Ill. Adm. Code § 176.205
25. 41 Ill. Adm. Code §176.210
26. 35 Ill. Adm. Code §721.247
27. 35 Ill. Adm. Code §721.104(a)(24)(f)(vi)
28. 415 ILCS 5/58.9
29. 415 ILCS 5/58.1(a)(2)
30. LUST 415 ILCS 5/57.12(g)
31. 415 ILCS 5/22.2(f) (1)(2)(3)(4)
32. 415 ILCS 5/22.2 (j)(1)(A)(B)(C)(D)
33. 415 ILCS 5/42(i)
34. IPI 60.01, "Violation of Statute, Ordinance, or Administrative Regulations"
35. 415 ILCS 5/44(h)(4.5)

RICE v. MARATHON PETROLEUM CORPORATION, et al.
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CHRONOLOGICAL ORDER OF AUTHORITIES/CASE LAW CITED IN PLAINTIFF'S MEMORANDUM OF LAW ON WHETHER 415 ILCS 5/57.1-19 (LUST) PROVIDES A PRIVATE RIGHT OF ACTION FOR PLAINTIFF IN THE CASE AT BAR

1. Plaintiff's Ex. #55, ISBA, Environmental Law Newsletter, January, 2002, "**A LUST for Money; Rediscovering the Indemnification Provisions of the Leaking Underground Storage Tank Program**;

2. Plaintiff's Ex. #56, ISBA Environmental Law Newsletter April, 2016, "**LUST at 27: The Leaking Underground Storage Tank Fund and the Incredibly Invisible Indemnifications Provisions**";

3. OK Trucking Company v. Armstead, 1995 Ill. App. LEXIS 546, 274 Ill. App. 3d 376, (1st Dist. 1995)

4. Marathon Oil Company v. Texas City Terminal Railway Company, 2001 U.S. Dist. LEXIS 16007 (S.D. Texas)

5. Aurora National Bank v. Tri-Star Marketing, Marathon Petroleum Company, 1998 U.S. Dist. LEXIS 472,16

6. First of America Trust v. Armstead, 1996 Ill. LEXIS 32, 171 Ill. 2d. 282

7. Phillips Petroleum Co. v. Illinois Environmental Protection Agency, 1979 Ill. App. LEXIS 2610, 72 Ill. App. 3d 217

8. People v. N L Industries, 1992 Ill. LEXIS 191, 152 Ill. 2d 82, 604 N.E.2d 349, (1992)

9. Perkinson v. Pollution Control Board, 1989 Ill. App. LEXIS 1289, 187 Ill. App. 3d 689 (3d Dist.)

10. State Oil Company v. People, 2004 Ill. App. LEXIS 1209, 7 -9, 822 N.E. 2d 786

11. NBD Bank v. Krueger Ringler, Inc., 1997 Ill. App. LEXIS 700, 292 Ill. App. 3d 691, (1st Dist. 1997)

12. Redarowicz v. Ohlendorf, 1982 Ill. LEXIS 323, 92 Ill. 2d 171, 441 N.E. 2d 325, 327 (Ill. 1982)

13. Sawyer Realty Group, Inc., v. Jarvis Corporation, 1982 Ill. LEXIS 239, 89 Ill. 2d 379, 388, 432 N.E.2d 849

14. People v. Fiorini, 1991 Ill. LEXIS 39, 143 Ill. 2d 318, 574 N.E.2d 616

15. People v. Brockman, 191 Ill. LEXIS 38,143 Ill. 2d 351, 574 N.E.2d 626 (1991)

16. Lloyd A. Fry Roofing Company v. Pollution Control Board, 1977 Ill. App. LEXIS 2269, 46 Ill. App. 3d at 412, (1st Dist. 1977)

17. ESG Watts, Inc. v. Pollution Control Board, Inc. 1996 Ill. App. LEXIS 608 ,282 Ill. App. 3d 43, (4th Dist. 1996)

18. People ex. rel. Ryan v. McHenry Shores Water Company, 1998 Ill. App. LEXIS 184, 295 Ill. App. 3d 628, (2d Dist. 1998)

19. People ex. rel. Madigan v. J.T. Einoder, Inc., 2013 Ill. App. LEXIS 864, 2013 Ill. App. (1st) 113498, (1st Dist. 2013)

20. Davis v. Marathon Oil Company, 1976 Ill. LEXIS 383, 64 Ill. 2d 380, (1976)

21. Kelsay v. Motorola, Inc., 1978 Ill. LEXIS 385, 74 Ill.2d 172

22. People ex. rel. Department of Labor v. Valdivia, 2011 Ill. App. LEXIS 886, 2011 Ill App (2d) 100998

23. Rekosh v. Parks, 2000 Ill. App. LEXIS 725, 316 Ill. App. 3d 58 (2d Dist. 2000)

24. Totty v. Anderson Funeral Home, Ltd., 2020 U.S. Dist. LEXIS 51188, 448 F. Supp. 3d 928

25. Corgan v. Muehling, 1991 Ill. LEXIS 42, 143 Ill. 2d 296

26. Rodgers v. St. Mary's Hospital, 1992 Ill. LEXIS 110, 149 Ill. 2d 302

27. Pilotto v. Urban Outfitters West, LLC., 2017 Ill. App. LEXIS 48, 2017 Ill. App. (1st) 160844

28. Friends of the Earth, Inc. v. Laidlaw Environmental Services, Inc., 2000 U.S. LEXIS 501, 528 U.S. 167, 120 S. Ct. 693

29. Dydio v. Heston Corp., 1995 U.S. Dist. LEXIS 7061, 887 F. Supp. 1037 (N.D. Ill. 1995)

30. Zands v. Nelson, 1991 U.S. Dist. LEXIS 19321, 779 F. Supp. 1254

31. Mondry v. Speedway Super America, LLC., 1999 U.S. Dist. LEXIS 9095 (N.D. Ill)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

LAURA E. RICE, Special Representative for the MARGARET L. RICE, Deceased,
Plaintiff,
v.

SPEEDWAY LLC, *et al.*,
Defendants/Third-Party Plaintiffs.
v.

FLAGG CREEK WATER RECLAMATION DISTRICT, *et al.*,
Third-Party Defendants.

EVA PATTERSON AND DAN PATTERSON,
Plaintiffs,
v.

SPEEDWAY LLC, *et al.*,
Defendants/Third-Party Plaintiffs,
v.

FLAGG CREEK WATER RECLAMATION DISTRICT, *et al.*,
Third-Party Defendants.

No. 2018-L-000783
Consolidated with:
No. 2018-L-010930

DEFENDANTS' REPLY IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS COUNTS I-III OF PLAINTIFF'S AMENDED COMPLAINT

NOW COME Defendants, SPEEDWAY LLC ("Speedway"), MARATHON PETROLEUM CORPORATION ("MPC"), and MANOJ VALIATHARA ("Valiathara") (collectively named hereinafter "Defendants"), by and through their attorneys, LITCHFIELD CAVO LLP, and in support of Defendants' Motion to Dismiss Counts I-III of Plaintiff's Amended Complaint,[1] state in its Reply as follows:

[1] Defendants acknowledge that the operative pleading is entitled "Amended Complaint" and not the "*First* Amended Complaint." The Motion to Dismiss is directed at the Amended Complaint.

PRELIMINARY STATEMENT

Defendants filed a Motion to Dismiss the Amended Complaint in its entirety based on lack of standing. Alternatively in that Motion, Defendants seek dismissal of the Negligence claims because they are duplicative of the Survival Act claims. This Motion to Dismiss the EPA Counts will be moot if the Court finds there is no standing and grants the Motion to Dismiss the Amended Complaint. Thus, in the interest of judicial economy, Defendants request that this Court consider and rule on the Motion to Dismiss the Amended Complaint in its entirety before considering this Motion.

Further, Plaintiff filed a 5-page Response to Defendants Motion to Dismiss the EPA Counts with two exhibits. Inexplicably, Plaintiff also filed a 57-page Memorandum of Law on Whether 415 ILCS 5/57.1-19 (LUST) Provides a Private Right of Action for Plaintiff In The Case At Bar with numerous exhibits totaling 179 pages.[2] The Memorandum is referenced in the final paragraph of Plaintiff's Response as an attempt to exceed the page limits and bootstrap additional arguments. The undersigned counsel is unaware of a practice allowing memorandums in support of a Response, let alone a 57-page memorandum without seeking leave in advance to file such a lengthy response. Hence, Defendants request that this Court strike the Memorandum and exhibits thereto.

As is discussed below, Plaintiff's Response to Defendants' Motion to Dismiss fails to refute the simple fact that Counts I-III (collectively referred to as the "EPA Counts") of Plaintiff's Amended Complaint are duplicative litigation of the State of Illinois' action and therefore must be dismissed pursuant to ILCS 2-619(a)(3).

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[2] In order to avoid confusion, citations to "Plaintiff's Response" means the 5 page document entitled "Response to Defendant's Motion to Dismiss Counts I, II, and III of Plaintiff's First Amended Complaint and citations to "Memorandum" means the 57 page document entitled "Plaintiff's Memorandum of Law on Whether 415 ILCS 5/57.1-19 (LUST) Provides a Private Right of Action for Plaintiff In The Case At Bar."

ARGUMENT

Plaintiff argues that the three EPA Counts in her Amended Complaint are not duplicative because only one of the defendants is the same, the Attorney General's suit does not expressly mention leaking underground storage tanks and the remedies sought are different. Peculiarly, Plaintiff's Response fails to cite any case law or other authority, either controlling or persuasive, to support its contentions that the 2017 Chancery Division EPA action filed in DuPage County by the Illinois Attorney General and DuPage County State's Attorney is not duplicative to the allegations asserted in Counts I-III of Plaintiff's Amended Complaint in the instant case. As is set forth below, the EPA Counts: (1) arise from the same occurrence as the 2017 Chancery Division EPA action; (2) are duplicative of the 2017 Chancery Division EPA action filed before the initiation of this case; and (3) the relief afforded under the Illinois Environmental Protection Act, and its subparts, has already been provided by and through the Consent Order[3] entered on December 4, 2018 by the Illinois Attorney General and DuPage County State's Attorney fulfilling the true and intended purpose of the Act.

I. COUNTS I-III OF PLAINTIFF'S AMENDED COMPLAINT ARE DUPLICATIVE OF THE STATE'S 2017 EPA ACTION.

When evaluating whether two actions are for the same cause, the crucial inquiry is **"whether the two *actions arise out of the same transaction or occurrence*, not whether the legal theory, issues, burden of proof** or relief sought **materially differ between the two actions."** *Kapoor v. Fujisawa Pharmaceutical Co.*, 298 Ill.App.3d 780, 786 (1998) (emphasis added), citing *Terracom Development Group v. Village of Westhaven*, 209 Ill.App.3d 758, 762, (1991) (emphasis

[3] Plaintiff accuses Defendants of violating the Consent Order term that '[n]one of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the Illinois Environmental Protection Act, . . . except as otherwise provided herein." Plaintiff's Response at ¶13. Defendants have not relied on or introduced as evidence any of the stipulated facts from the Consent Order. The Consent Order is introduced for the binding nature of the relief obtained by the State of Illinois against Speedway. In other words, Defendants rely on the Consent Order in the same way Plaintiff relies on it in its Response.

added). "***Neither the parties nor the cause need be identical*** *to the prior [or] pending suit.*" *Kapoor*, 298 Ill.App.3d at 786, quoting *Forsberg v. City of Chicago*, 151 Ill.App.3d 354, 372 (1987) (emphasis added). Since **Section 2-619(a)(3) refers to the "same cause," not to the "same cause of action,"** and is invoked where there is a **"substantial similarity of issues"** between the two actions, the central inquiry, guided by common sense, is **whether the relief requested rests on substantially the same facts**. *Kapoor*, 298 Ill.App.3d at 786, citing *Philips Electronics, N.V. v. New Hampshire Insurance Co.*, 295 Ill.App.3d 895 (1998) and *Illinois Central Gulf R.R. Co. v. Goad*, 168 Ill.App.3d 541 (1988) (emphasis added) and quoting *Bank of Northern Illinois v. Nugent*, 223 Ill.App.3d 1 (1991) and *Tambone v. Simpson*, 91 Ill.App.3d 865, 867 (1980).

A. Counts I-III Of Plaintiff's Amended Complaint And The State's EPA Action Arise From The Same Occurrence.

Plaintiff does not dispute that the 2017 Chancery Division EPA action filed in DuPage County by the Illinois Attorney General and DuPage County State's Attorney and Counts I-III of Plaintiff's Amended Complaint are entirely based upon the same underlying facts and issues. Plaintiffs in both the Illinois EPA action and here seek to hold Defendants accountable for the alleged statutory violations of the same Act. Each of the three EPA Counts in Plaintiff's Amended Complaint assert approximately 217 paragraphs of general allegations identifying which provisions of the Act Plaintiff claims Defendants violated. None of these 217 paragraphs specifically identify Ms. Rice, her claimed damages, or how the alleged conduct resulted in her claimed damages. Rather, the 217 paragraphs read like the allegations asserted in the 2017 EPA action as they identify the provisions Defendants allegedly violated, how the Defendants allegedly violated those provisions, and the various penalties Defendants are subject to if they did violate those provisions. Even Plaintiff's prayers for relief at the end of each EPA Count generally allege that because of the violations, Defendants owe Plaintiff the relief available under the Act. *See*

Plaintiff's Amended Complaint Count I, ¶391, Count II, ¶392, and Count III, ¶389 ("By the terms of the Act, generally, and LUST specifically ..." all remedies and damages of any kind granted to, or allowed to be sought by, plaintiffs [sic] decedent, Margaret L. Rice, under the Act and LUST, survived her death; that had she survived she would have been entitled to bring an action for all remedies, damages, injuries and loss under the terms of the Act and LUST..."). Since Counts I-III were, in fact, brought pursuant to the Act and for the remedies provided under the Act, then Plaintiff's allegations therein quite clearly show that Plaintiff's interests are substantially the same as those of the Plaintiffs in the 2017 EPA action.

But the analysis of similarities need not stop there. Even a casual reading and comparison of Rice's Amended Complaint and the State's EPA Complaint will indisputably demonstrate that the factual basis of both matters arise from the same events leading up to and including October 20, 2017 at the Westmont Store. Compare 2017 EPA Complaint (attached hereto as Exhibit A) and Plaintiff's Amended Complaint. In fact, much of the factual allegations regarding the Westmont Store in Rice's Amended Complaint seem to be copied from, or are paraphrased from, allegations in the 2017 EPA Complaint. Moreover, both complaints allege that gasoline leaked from one of the 10,000-gallon underground storage tanks. *Compare* Ex. A at ¶11 with Amended Complaint at ¶¶142. Both complaints allege that the gasoline from the affected UST entered the sanitary sewer system. *Id.* Both complaints also allege that the gasoline and vapors migrated to the Knoll Wood complex and caused an explosion. *Compare* 2017 EPA Complaint at ¶¶14-16 with Amended Complaint at ¶¶147-48. In fact, examples of the uncanny similarities in the two pleadings include allegations of the suspected odor of nail polish (2017 EPA Complaint ¶13 v. Amended Complaint ¶146), Speedway's ownership and operation of the UST System (2017 EPA Complaint ¶25 v. Amended Complaint ¶63), and the characteristics of gasoline (2017 EPA

Complaint ¶¶9-10 v. Amended Complaint ¶¶40-59). It would be disingenuous for Plaintiff to claim that these two cases do not arise out of the same occurrence.

B. "Same Parties" Does Not Mean Identical Parties.

The **parties need not be identical** to find that two actions are between the "same parties" for Section 2-619(a)(3) purposes. *Kapoor*, 298 Ill.App.3d at 789 (emphasis added). The test is **satisfied if the litigants' interests are sufficiently similar**, even though differing in name or number of parties. *Cummings v. Iron Hustler Corp.*, 118 Ill.App.3d 327, 333 (1983) (emphasis added), citing *International Games v. Sims, Inc.*, 111 Ill.App.3d 922 (1982). Here the parties are materially the same. Speedway was named as the defendant in the Verified Complaint filed by the Illinois Attorney General and DuPage State's Attorney on behalf of the People of Illinois. *See* **Ex. A**. The 2017 EPA action was filed in accordance with statutory provisions of the Act and in furtherance of the Act's purpose and public policy. The EPA action itself and the resulting 2018 Consent Order effectuated the intended purpose of the Act: it restored and protected the environment, and assured that the adverse effects upon the environment were fully considered and borne by Speedway; the affected environment was protected by the November 13, 2017 Agreed Immediate and Preliminary Injunction Order and ongoing reporting requirements pursuant to the December 4, 2018 Consent Order; the adverse effects on the environment allegedly caused by Speedway's USTs were evaluated, remediation plans were developed, remedial action was undertaken and paid for by Speedway, and compliance with specific remediation efforts has been maintained; and monetary Civil Penalties under the Act were assessed, adjudicated, ordered, and paid by Speedway. The fact that the store manager Valiathara or MPC, an entity who does not own or operate the Westmont Store were not parties to the 2017 EPA action is irrelevant to whether the two actions are for the same cause.

C. The Specific Relief Sought Is Immaterial When They Are Based On Substantially The Same Set OF Facts.

Plaintiff further attempts to distinguish the 2017 EPA action from the instant action based on the type of relief sought in this case versus the relief already granted in the 2017 EPA action. The type of relief sought in each case is not crucial to the inquiry this Court must undertake to determine whether the two actions are for the same cause. However, a close examination of the relief sought will show that even the civil penalties obtained in the 2017 EPA action are the same as those sought here.

As explained in Defendants' Motion to Dismiss, **two actions are for the same cause when the relief requested is based on substantially the same set of facts**. *Overnite Transp. Co.* v. *International Brotherhood of Teamsters, et al*, 332 Ill.App.3d 69, 76 (1st Dist. 2002) (emphasis added), citing *Village of Mapleton v. Cathy's Tap, Inc.*, 313 Ill.App.3d 264, 266 (2000). The crucial inquiry is *whether the two actions arise out of the same transaction or occurrence*, **not** whether the legal theory, issues, burden of proof or **relief sought materially differs between the two actions**. *Id.* (emphasis added). The Illinois Supreme Court and Appellate Courts have further held that, "the *purpose of the two actions need not be identical*; rather, there need only be a substantial similarity of issues between them." *Id.* (emphasis added). Both the 2017 EPA action and Plaintiff's EPA Counts I-III are brought pursuant to the Illinois EPA and its corresponding subsections, provisions and administrative codes. The purpose of the Act is 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 caused them*" (415 ILCS 5/2(b) (emphasis added)).

In *Overnite Transp. Co.*, the 1st District Appellate Court held that although the relief plaintiff sought in its complaint before the National Labor Relations Board (NLRB) was different

from the monetary damages it sought in its state court complaint, and despite some additional factual allegations asserted in the state court complaint, the allegations in both actions arose from the same incident and were very similar, as the focus of both actions was the punishment for defendant's activities intended to unionize plaintiff's employees. *Overnight Transp. Co.*, 332 Ill.App.3d at 76-77.

The circumstances of this case are analogous, and strikingly similar, to those decided by the court in *Overnight Transp. Co.* Plaintiffs in *People v. Speedway*, DuPage County, 2017 CH 1505, by the request of the Illinois EPA, sought *both* injunctive and other relief for Defendants statutory violations, specifically concerning the subject UST system, and Defendants' alleged related conduct prior to the incident on October 20, 2017. *See*, **Ex. A, Ex. B, p. 2 and Ex. C**. Likewise, Plaintiff in the instant action seeks monetary damages for her claims that Defendants violated specific provisions under the Act and Illinois Administrative Code by their alleged conduct prior and related to the incident on October 20, 2017. *See*, *Plaintiff's First Amended Complaint*, Counts I–III at 34-161. It is clear that Counts I-III of Plaintiff's Amended Complaint seek damages based on the exact same conduct.

As stated above, the relief sought by Rice – civil penalties – were sought in the 2017 EPA action. Specifically, the State of Illinois sought "a civil penalty of Fifty Thousand Dollars [] for each violation of the Act and an additional penalty of Ten Thousand Dollars [] for each day of violation.[4] Ex. A, 2017 EPA Complaint at ¶6. These civil penalties were requested pursuant to 415 ILCS 5/42(a) (2016). *Id.* In comparison, Rice outlines, *inter alia,* the same subsection of the Act. Amended Complaint at ¶205, *see also* ¶206 and Counts I-III *passim.* Finally, Plaintiff's ad damnum clauses in each EPA Count seeks "all damages and remedies allowed pursuant to the Act

[4] The State also sought injunctive relief.

and LUST . . .." *Id.* at 76, 119, 160-61. In short, even though the relief sought need not be identical, i.e., Rice need not seek injunctive relief as well, it is clear that Rice seeks the same civil penalties that the State of Illinois sought in its 2017 EPA action.

D. The Consent Order In The 2017 EPA Action States It Was An Adjudication Of The Issues.

A Consent Order was entered on December 4, 2018 comprehensively settling the 2017 EPA action, based on Defendants' alleged statutory violations of the Act, and awarding the Illinois Attorney General and DuPage State's Attorney the injunctive and monetary damages sought by Plaintiffs and requested by the Illinois EPA. **Ex. B and Ex. C**. The requested monetary damages available under the Act, agreed upon by the Plaintiffs, and deemed appropriate by the court, were addressed, ordered and paid by Defendants to the Illinois EPA for deposit in the Environmental Protection Trust Fund, in accordance with the policy and purpose of the Act. **Ex. C**. The injunctive relief, remedial action and costs associated with the requisite remediation efforts, and inspection and reporting requirements delineated in the Consent Order have been complied with and carried out by Defendants, as ordered. Per the Order's introductory clause, the Illinois Attorney General, DuPage County State's Attorney and Defendants intended that Consent Order to be "a final judgment on the merits of the case." **Ex. C**. Thus, the 2017 action was properly and formally adjudicated and settled in accordance with, and furtherance of, the Act's purpose.

Plaintiff incorrectly asserts that the 2017 EPA action was not an adjudication of the issues in that matter. See Plaintiff's Response at ¶12. The Consent Order, which was entered by the DuPage County Circuit Court, explicitly states that it "may be used against Defendant in any subsequent enforcement action or permit proceeding *as proof of a past adjudication* of violation of the Act and the Board Regulations for all violations alleged in the Complaint in this matter, for

purposes of Sections 39 and 42 of the Act . . .." **Ex. C** at 4. "This Consent Order is a binding and enforceable order of this Court." *Id.* at 11.

Therefore, like the duplicative actions in *Overnite Transp. Co.*, the adjudicated and settled 2017 EPA action and the allegations asserted in Counts I-III of Plaintiff's Amended Complaint in the instant action arise from the same incident and are strikingly similar, as the focus of both actions is punishment for the Defendants' statutory and code violations, concerning the subject UST, by way of their conduct prior and related to the October 20, 2017 incident. The issues of 2017 EPA action relate to those raised in Counts I-III as the allegations in both actions arise from the same incident and are virtually indistinguishable.

II. DISMISSAL OF COUNTS I-III OF PLAINTIFF'S AMENDED COMPLAINT WILL NOT UNFAIRLY PREJUDICE PLAINTIFF OR PREVENT PLAINTIFF FROM RELIEF; HOWEVER, ALLOWING THE COUNTS TO REMAIN WILL PREJUDICE DEFENDANTS..

Plaintiff contends that, in addition to the relief sought and provided in the 2017 EPA action for Defendants' violations of the Act, Plaintiff also has a "right" to file a second suit in a different forum about three and a half years later seeking additional relief, *i.e.*, under additional provisions of the same Act, for the exact same conduct. **Ex. A** and *Plaintiff's Amended Complaint* Counts I-III. Plaintiff also seemingly claims that she was unable to intervene or benefit from the 2017 EPA action, which settled after a year of litigation, to recover the relief Plaintiff is now seeking under the same Act for the same conduct in the spirit of the same "public policy". *See Amended Complaint* at Counts I, ¶391, II, ¶392, and III, ¶389. Contrary to Plaintiff's contentions, the central inquiry of Section 2-619(a)(3) is "not whether the legal theories or the relief sought materially differs between the two actions." *See Kapoor*, 298 Ill.App.3d at 790; *Katherine M. v. Ryder*, 254 Ill.App.3d 479 (1993) (the fact that the plaintiffs were unable to assert their state law claims in federal court was irrelevant to the determination of a section 2–619(a)(3) dismissal).

To allow Plaintiff to proceed with Counts I-III would nullify the purpose and authority of the December 4, 2018 Consent Order, as well as circumvent the Illinois Environmental Protection Agency's, Illinois Attorney General's and DuPage County State's Attorney's authority, competence and ability. Additionally, allowing Plaintiff's EPA counts to proceed would subject Defendant Speedway to a civil double jeopardy. Moreover, MPC and Valiathara could potentially face liability when neither owned or operated the UST system at the Westmont Store. Simply stated, Plaintiff is not entitled to damages under the Act for personal use or private possession outside of the purpose for remediation or property damage, considering that Defendant's purported violations of the Act were already adjudicated and settled in the 2017 EPA action via the Consent Order entered December 4, 2018. As such, Plaintiff's intent to receive damages under the Illinois Environmental Protection Act for personal use or private possession in no way comports with the true purpose of the Act or the public policy that effectuates that purpose.

III. PLAINTIFF FAILS TO ADDRESS HER FAILURE TO EXHAUST HER ADMINISTRATIVE REMEDIES.

It should be noted that between Plaintiff's Response and Memorandum totaling 62 pages, she fails to address the fatal defect of not exhausting her administrative remedies. Assuming, *arguendo,* that the two actions were not substantially similar and Plaintiff had a right to proceed with her action, Plaintiff has not explained why she would be permitted to prosecute these claims under the Act. As is discussed in great detail in Defendants' Motion to Dismiss the EPA Counts (pp. 12-13), Plaintiff must first file a complaint with the Board overseeing UST regulations. Plaintiff has presented no evidence that she pursued this avenue first. For the reasons set forth in Defendants' Motion to Dismiss the EPA Counts, Defendants' Motion should be granted.

WHEREFORE, for the reasons set forth in their Motion and this Reply, Defendants respectfully request that this Court grant its Motion to Dismiss the EPA Counts.

Respectfully Submitted,

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

LAURA E. RICE, as Special Representative of the Estate of MARGARET L. RICE, deceased

Plaintiffs,

vs.

MARATHON PETROLEUM CORPORATION, an Ohio Corporation, SPEEDWAY, LLC., a Delaware Limited Liability Company, and MANOJ VALIATHARA,

Defendants.

No.: 18 L 000783
Consolidated w/18 L 010930

MARATHON PETROLEUM COMPANY, an Ohio Corporation, SPEEDWAY, LLC., a Delaware Limited Liability Company, and MANOJ VALIATHARA,

Third-Party Plaintiffs,

vs.

SOUND INC., ILLINOIS BELL TELEPHONE COMPANY LLC d/b/a AT&T ILLINOIS, Incorrectly sued as AT&T, Inc., COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC., COMMONWEALTH EDISON COMPANY, FLAGG CREEK WATER RECLAMATION DISTRICT, LAURENS RESTORIATION, INC., and ROBINETTE DEMOLITION, INC., MONROE TRANSPORTATION SERVICES, INC.

Third-Party Defendants.

PLAINTIFF LAURA RICE, AS SPECIAL REPRESENTATIVE OF THE ESTATE OF MARGARET L. RICE, DECEASED, MOTION TO RECONSIDER THE COURT ORDER OF OCTOBER 15, 2021

C 27130 V15

Now comes the plaintiff, LAURA E. RICE, as Special Representative of the Estate of MARGARET L. RICE, deceased, and for her Motion to Reconsider the Court Order of October 15, 2021, states as follows:

1. A party may move for reconsideration due to the misapplication of existing law to the facts at hand. Nissan Motor Acceptance Corporation v. Abbas Holding I., Inc., 2012 Ill. App. (1st) 111296, 16, 976 N.E. 2d 1076.

2. The Court's Order of October 15, 2021, (1) misapplies the current law to the existing facts at hand, relies on faulty case law and overrules Davis v. Marathon, 1976 Ill. LEXIS 383; (2) renders meaningless the LUST financial responsibility requirements mandated under Federal law; (3) likely takes the LUST program out of compliance with federal UST requirements; (4) misstates the primary purpose and public policy behind the Illinois EPA and LUST; (5) violates Illinois public policy; (6) violates plaintiff's due process and equal protection rights under both the Illinois' and Federal Constitutions; and (7) misapplies the law concerning implied private rights of action.

3. The genesis of the Court Order of October 15, 2021, was the March 25, 2021, filing of plaintiff's Amended Complaint, now First Amended Complaint filed September 13, 2021, and Plaintiff's Motion for Punitive Damages by Operation of Law as to Counts I, II, and III of her Amended Complaint at Law, Pursuant to 415 ILCS 5/1 et seq., Illinois Environmental Protection act and 415 ILCS 5/57 et seq., Leaking Underground Storage Tanks Program (LUST) filed on March 29, 2021.

4. This Court was correct when it stated that the issue is whether the plaintiff can bring a private right of action under the Illinois EPA Act (LUST), for bodily injury and

damages, on the facts of this case, as stated in Counts I, II, and III of Plaintiff's First Amended Complaint (hereafter "Complaint").

5. Black's Law Dictionary, (11th Ed) defines the word, "express," different than Merriam-Webster's Dictionary. Black's states: **express, *adj.* (14c) Clearly and unmistakably communicated; stated with directness and clarity. Cf. IMPLIED. – expressly, *adv.***

6. The UST statutes cited in Counts I, II, and III of the Complaint, are not, "attempts to identify certain words in various locations of the statute, put them together, and then sum up a conclusory argument," as this Court claims. LUST, and related statutes grant plaintiff a cognizable private right of action, whether expressed or implied. The legislature's intent is clearly and unmistakably communicated in a direct and clear way through these statutes. Plaintiff's Complaint, Count's I, II, and III, merely follows what LUST, and implementing statutes, provide. There is no ambiguity in the statutes that give plaintiff a private right of action under LUST for her bodily injuries.

1. MISAPPLICATION OF EXISTING LAW

7. This Court erred in relying on the Chrysler, Great Oak, and Norfolk Southern Railway Company trilogy of federal district court cases in rejecting plaintiff's claim that she has a private, right of action under LUST due to Defendant's noncompliance with LUST and related statutes, which directly led to her bodily injuries. All three Federal District Court cases based their rulings that the IEPA, "does not provide a private right of action," for corrective/remediation claims, on a very superficial reading of the then existing IEPA. Except for Chrysler, the cases do not involve underground storage tanks but rather a dry cleaner, and a wood treatment facility.

8. In finding no private right of action under the IEPA, all three Federal District Courts mistakenly relied on NBD Bank v. Krueger Ringier, Inc., 1997 Ill. App. LEXIS 700, 292 Ill. App. 3d 691, (1st Dist. 1997).

9. Initially, it must be noted that no Illinois Appellate Court has ever cited NBD, or Chrysler, for the proposition that the IEPA, in general, and specifically, under LUST, does not provide a private right of action for violations of environmental laws that directly lead to bodily injuries, or for corrective actions/remediation costs.

10. Whether the plaintiff is a private individual citizen such as plaintiff, or a corporate citizen such as defendants, they may seek reimbursement from the underground storage tank fund for corrective actions taken as the result of a petroleum release. Yet, while there is no "express", private citizen right of action under IEPA or LUST for "corrective actions," they are clearly recognized as defined by LUST and caselaw.

11. This principal was affirmed in Edward Malina, Complainant, v. Jean Day, Respondent, 1998 Ill. Envl Lexis 28, PCB #98-54, which firmly rejected the NBD decision. "In Ostro and its progeny, a private right of action is not in dispute; Section 31(d) of the Act allows a private citizen to sue any person for a violation of the Act... "The instant case involves a citizen's enforcement action brought under Section 31(d) of the Act, 415 ILCS 5/31(1) 1996." (1998 Ill. Env Lexis 28, 6.) (Attached) The Malina case trumps the Chrysler trio of cases on the issue of whether a private right of action is allowed under the Act.

12. The NBD Court itself acknowledged that NBD, "centers upon claims brought against the sellers by the purchaser in a real estate transaction" NBD, 1997 Ill. App. LEXIS

700, 11. Chrysler, was also premised on a real estate transaction. The case at bar does not involve a real estate transaction.

13. The Illinois Supreme Court would likely not consider the NBD case to be relevant, and certainly not helpful, in resolving the issue of whether plaintiff in the case at bar has a private right of action, whether express or implied, for the bodily injuries/burns she received as a direct result of defendant's noncompliance with LUST. It would likely find the Illinois Pollution Control Board decision in Malina more persuasive on the subject of Illinois Environmental Laws than the Chrysler trilogy of cases that misstate the law.

14. The Illinois Supreme Court has directly, firmly, and explicitly stated, "we find that the Environmental Protection Act fails to preclude third party actions" People v. Fiorini, 1991 Ill. LEXIS 39, 44, 45, 143 Ill. 2d 318, 351. It is likely the Illinois Court would find more direction in the Fiorini and Davis v. Marathon decisions than the NBD case.

A. DAVIS V. MARATHON AND IPI 60.01

15. The Court Order of October 15, 2021, (hereafter "Court Order") effectively overrules Davis v. Marathon, 1976, Ill. LEXIS 383. Davis is most "on point" as it involves the application and use of UST laws now found in the Gasoline Storage Act, 430 ILCS 15/1 et seq. (hereafter "GSA")

16. On page 2, the order precludes plaintiff's from publishing, and having the jury instructed on, the multiple LUST violations pursuant to IPI 60.01. Having dismissed Count I, II, and III, this part of the order applies to plaintiff's negligence counts, Counts IV, V, and VI of the Complaint.

17. The Court Order prevents Plaintiff from any remedy for violations of the various LUST statutes stated throughout the Complaint that led to her injuries.

18. Davis, and the case at bar both involve: (1) a gasoline station; (2) spilling of gasoline; (3) a spark; (4) an explosion and fires; and (5) bodily injuries due to violations of UST laws. The statutes examined by the Davis Court are now found in the Gasoline Storage Act, 430 ILCS 15.1-7, which implements LUST and related statutes.

19. In Davis, "Plaintiff's injuries were the result of a gasoline explosion and fire on March 5, 1970, at a service station in Villa Grove, Illinois. Plaintiff claimed defendant was negligent in the manner in which it stored gasoline on the station premises." 1976 Ill. LEXIS at 1 – 2. In the case at bar plaintiff is making the same type of claims. Her claims are based on violations of UST storage laws, including the Gasoline Storage Act.

20. The Gasoline Storage Act, 430 ILCS 15/1, "Unlawful storage, transportation; sale, and use of volatile combustibles," states:

> **"It shall be unlawful for any person, firm, association or corporation to keep, store, transport, sell or use any crude petroleum, benzine, benzol, gasoline, naphtha, ether or other like volatile combustibles, or other compounds, in such manner or under such circumstances as will jeopardize life or property."**

21. The public policy of the GSA is to, "insure the safety and welfare of the general public" 430 ILCS 15/2(1)(b).

22. In Davis, 1976 Ill. LEXIS 383, plaintiff had a contract to provide defendant's gasoline to gas stations. After transporting gasoline to defendant's gas station plaintiff began filling defendant's UST's. While doing so gasoline spilled out of the UST and an explosion and fire occurred, causing plaintiff to sustain burns. Id. at 4 – 7.

23. In Davis both parties wanted to utilize IPI 60.01 and publish to the jury various Gasoline Storage Statutes. Id. at 8, 9.

24. The Davis Court specifically stated "the party requesting instruction number 60.01 must also demonstrate that the statute or ordinance was intended to protect against the injury incurred, and that the injured party is within the class intended to be protected." (collects cases) 1976 Ill. LEXIS at 9, 10.

25. The Davis Court allowed plaintiff to proceed with his lawsuit. It reversed the trial court because defendants were prejudiced by not having their IPI instruction on the Gasoline Storage Act also be given to the jury. Id. 8 - 9.

26. In the case at bar there is no question that plaintiff's injuries were directly caused by the illegal transportation, storage, and then release, of gasoline from defendant's UST at Speedway gasoline station #7445. No doubt the GSA was violated, just as it was in Davis.

27. The GSA employs the same definitions of "bodily injury", "property damage", and "occurrence" as LUST does. See, 430 ILCS 15/4(e). Like LUST, it is limited to injuries due to noncompliance with UST laws.

28. The GSA also has financial responsibility requirements, "for bodily injury and property damage to third parties", and separate requirements of liability insurance for corrective actions. See, 430 ILCS 15/6.1(a)(b)(1)(2).

29. Why would the plaintiff in Davis be a member of the class of those protected by UST Laws but the current plaintiff is not? The public policies and purposes are the same today as then. Petroleum is just as dangerous today as it was in 1976. A spark still ignites gasoline. To not allow plaintiff have the jury instructed on each and every one of the relevant LUST statute violations stated in her Complaint contravenes the ruling of the Davis Court.

30. As in Davis, plaintiff's injuries occurred as the result of the transportation, storage, and operation of UST's. Given the facts in the case at bar the Davis Court would not dismiss any of plaintiff's Complaint.

31. Pursuant to Davis the present Illinois Supreme Court would likely extend Davis to LUST and recognize that plaintiff in the case at bar does have a private right of action against defendants for their noncompliance with LUST, which directly led to her injuries. At a minimum, plaintiff is entitled to have the jury instructed on the violations of the Gasoline Storage Act, and other related LUST laws, in her Compliant. Plaintiff in the case at bar, just as the plaintiff, and defendant, in Davis, is allowed to publish the Gasoline Storage Act and related UST laws to the jury. While the Court Order seemingly abrogates Davis, it remains the most analogous to the facts in the case at bar and involves the same statutes.

B. CHANGE IN LAW

32. The law clearly changed after the Chrysler trilogy. On August 21, 2003, IEPA Article XII, Penalties, 415 ILCS 5/42 was amended by adding that private citizens may bring lawsuits due to non-compliance with the Act. It expressly added the language, **"notice of citizen's suit"**, and, **"the filing of a complaint by a citizen"**, due to noncompliance of the Act. See, 5/42(i)(3)(ii)(iii). See, Plaintiff's Ex. #1, 2003 Illinois Senate Bill 1379, p. 18, 24, 25 (Attached). "Citizens" were added to the Illinois Attorney General and State's Attorney as those allowed to bring actions for noncompliance.

33. The Illinois Supreme Court would recognize 5/42(i)(3)(ii)(iii) and allow plaintiff's "citizen suit" under LUST for defendant's noncompliance. And, based on our

facts, would likely require defendants to respond in damages, both compensatory damages for her injuries, and 5/42(h)(1)-(8) to assess punitive damages.

34. The legislature did not place any limitations on citizen suits. They exist for either corrective actions or bodily injury actions due to noncompliance with the Act. This fact, coupled with the financial liability/insurance requirements found in LUST, further show a clear legislative intent to allow private citizens to bring lawsuits for either type of action when noncompliance with LUST results in either corrective/remediation claims or bodily injury claims seeking damages due to the noncompliance.

35. On a practical level, the only real difference is that while private corrective/remediation actions due to noncompliance with LUST are common, bodily injury actions due to LUST violations are extremely rare. Both plaintiff and defense counsel agree that private rights of actions for corrective/remediation actions are recognized.

36. Defendant's sought money from the LUST fund for some of it's remediation costs from the release that caused Plaintiff's injuries. The form Defendants use to seek money from the LUST fund recognizes that both corrective action and bodily injury indemnification is available to owners and operators of USTs. See, Plaintiff's Ex. #228, p. 3. See also, Plaintiff's Ex. E, deposition of Mitch Oliver, p. 159, l. 18 – 24, p. 160 l. 1 - 24, p. 162, l. 1 - 23. If defendant's recognize underlying actions for both corrective actions and indemnification/bodily injury claims this Court should too.

37. It is presumed that the legislature knew of the financial responsibility/liability requirements found in LUST, and it's implementing statues, when it amended/created 5/42(i) in 2003, adding the citizen lawsuit provisions for noncompliance.

2. THE COURT ORDER OF OCTOBER 15, 2021, RENDERS MEANINGLESS, THE LUST FINANCIAL RESPONSIBILITY REQUIREMENTS AND FEDERAL LAW.

38. A plain, simple reading of the statutes concerning LUST financial responsibility/liability further support the proposition that, "third party claims for bodily injury," due to LUST violations exist, just like private actions for corrective actions exist. It is the only logical result. A Court should not recognize only one private right of action, i.e., corrective actions, when the statute also provides for bodily injury claims. Why would the legislature discriminate in the application of the statute? Why would the legislature create such a limiting, and specific, definition of "bodily injury," found in LUST, if they did not also recognize an underlying cause of action?

39. The LUST Fund, which sets the limits for liability payments, was created primarily to incentivize defendants such as Marathon/Speedway to comply with the LUST rules and regulations. The LUST Fund expressly allows owners/operators to seek reimbursement/indemnification for both corrective/remediation actions **or** bodily injury claims due to leaking USTs. Without underlying private rights of action for both types of indemnification the LUST Fund statute is nonsensical and without half it's meaning.

40. The LUST Fund regulations do not discriminate on whether a petroleum release from a UST results in corrective action or bodily injury indemnification claims due to a leaking UST causing the damage. By allowing both types of claims by owners/operators the legislature had to presume private rights of actions exist for both corrective action/remediation actions and for bodily injury claims, as long as they were caused by a leaking UST. To say otherwise would render the statutes inconsistent and discriminatory, as the same financial requirement mandates for corrective action claims apply to bodily injury claims.

3. THE COURT ORDER OF OCTOBER 15, 2021, TAKES THE LUST PROGRAM OUT OF FEDERAL COMPLIANCE

41. The Court order abrogates the need for liability insurance for bodily injury claims due to violations of LUST, even though it is mandated by Federal and State Law. LUST is required to follow the RCRA, the Federal UST laws, which are found at Title 42, USC, The Public Health and Welfare, Section 6991, et seq.

42. The law states: 42 USC §6991c, **Approval of State Programs**, (a) Elements of State Program, requires, inter alia, that state UST programs, "must mandate that UST owners and operators (1) take corrective action in the event of a release and (2) maintain evidence of financial responsibility for taking corrective action **and compensating third parties for bodily injury and property damage caused by sudden and non-sudden accidental releases arising from operating an underground storage tank.**" See, 42 USC Section 6991, c (4) and (6). (emphasis supplied)

43. This Federal UST statute seems to clearly and unmistakably communicate a presumption that underlying bodily injury actions are recognized. Based on a plain reading of the statute that is a rational, logical, and sensical conclusion. Without an underlying cause of action for bodily injury due to LUST violations why would the federal law require insurance for LUST violations that cause bodily injury to third parties such as plaintiff? Why else would the government require owners and operators purchase bodily injury liability insurance for leaking UST's?

44. The Court Order, by effectively abrogating the Federal and Illinois liability insurance mandates for bodily injury due to LUST violations, takes the Illinois LUST program out of compliance.

45. It is factually, legally, and logically inconsistent to require owners and operators of USTs to purchase liability insurance to compensate third parties for bodily injury and property damage due to LUST violations, and then have a Court rule that citizens do not have private rights of actions for bodily injury liability claims under LUST. It is an absurd result. It is also unfair to owners/operators of UST's to require them to purchase liability insurance for private rights of action for bodily injury claims that do not legally exist.

46. In order to seek indemnification for a bodily injury claim due to a leaking UST, Illinois law requires a Court Order verifying same. Why would the law require such proof of a specific cause of action that does not exist?

47. Without a recognizable, underlying private right of action allowing private citizens, such as plaintiff in the case at bar, to bring a third-party liability lawsuit for LUST violations, there is simply no need for the financial requirement/liability statutes to exist, though mandated by both Federal and Illinois Law.

4. INCOMPLETE PUBLIC POLICY

48. The Court order also bases its decision on an incomplete statement of both the IEPA and LUST public policies and purposes.

49. The primary, underlying public policy and purpose of both the IEPA and LUST is the protection of the public health, welfare, and safety. Other public policies and purposes are to encourage voluntary disclosure of noncompliance, to prevent violations of environmental laws, and encourage compliance with environmental laws such as LUST. No Illinois Appellate Court limits IEPA or LUST public policy solely to, "protection of the environment."

50. The purposes and policies of both the IEPA and LUST are effectuated by the enforcement of those laws. The Courts' Order neglects the primary and express legislative intent found in the Preamble to the IEPA and the financial/liability insurance statutes implementing LUST.

51. The public policy of the IEPA and LUST were testified to by Steve Putrich. Mr. Putrich is the IEPA underground storage tank program project manager. He confirmed that the Illinois LUST laws, "mimics" the Federal regulations. The public policy of the IEPA is the protection of public health, welfare, and safety. The purpose of LUST is the same, as well as to prevent, and remedy, the effects of leaking UST's. Indeed, the dangers to public health, welfare, and safety from leaking underground storage tanks was one of the primary reasons for the enactment of IEPA. See, Plaintiff's Ex. #F, S. Putrich deposition, p. 7-11, 45-48, 70, l. 16-23, p. 71 l. 1-14.

52. In addition, as this Court is aware, Scott Johnson of OSFM, testified that defendants' actions of noncompliance that caused the October 20, 2017, fires and explosions, and plaintiff's injuries, constituted willful violations of LUST. See, Plaintiff's Ex. #A, deposition of Scott Johnson, p. 19, l. 8-19; p. 80, l. 4-24; p. 81, l. 1-5, 8-15, 20-24; p. 82, l. 1-4, 23-24; p. 83, l. 1-15; p. 86, l. 1-12, 18; p. 125, l. 4-14, 16-19; p. 126, l. 1-13, 17-24; p. 127, l. 5; p. 129, l. 9-20.

53. The Court Order does nothing to further the primary public policies and purposes of the IEPA and LUST. Rather, it will discourage voluntary disclosure of noncompliance and encourage further noncompliance.

54. Defendants such as Marathon/Speedway, and other similarly situated entities, will have little incentive to comply with LUST. There will be scant motivation in

preventing LUST violations that result in bodily injury and property damage to members of the public such as plaintiff as there will be no repercussions for the violations.

55. By not recognizing private rights of action based on bodily injury from LUST violations, but only corrective action/remediation private rights of actions, Illinois residents who suffer bodily injury as a result of a leaking UST are unable to seek compensatory and punitive damages allowed under 415 ILCS 5/42(h)(1)-(8). To allow only corrective/remediation claimants to seek damages under 5/42(h)(1)-(8) defendants face no meaningful consequences for violations of environmental laws that are primarily designed and intended to protect and prevent injuries to the public.

5. EQUAL PROTECTION AND DUE PROCESS VIOLATIONS

56. By ruling that Plaintiff is not a protected person under both the IEPA and LUST, and thus has no private right of action to seek compensation for her bodily injuries, as well as an award of punitive damages under 5/42(h)(1)-(8), while recognizing other private plaintiff's, such as MPC/Speedway, may bring corrective action/remediation lawsuits, and seek damages under 5/42(h), this Court imposes discriminatory limitations that have never been expressed by the legislature, or caselaw.

57. The Court Order leads to an inconsistent result that violates basic Federal and Illinois equal protection and due process principals.

58. Unlike most plaintiffs, plaintiff in the case at bar has standing under Article XI, Section II of the Illinois Constitution. In LUST, the legislature expressed an understanding that only people who receive bodily injuries from a leaking UST may bring actions for those injuries directly related to a leaking UST.

59. The Court Order will result in, if not require, inconsistent, discriminatory results concerning damages allowed under 5/42(h)(1)-(8) that are based on the same petroleum release from the same leaking UST. For example, if a petroleum release from a gas station's leaking UST poisons a person's well, he may bring a private right of action for corrective action/remediation costs under LUST against the gas station. If the same release blows up his neighbor's home, and inflicts serious bodily injuries, the neighbor is without any remedy if he attempts to hold the same gas station responsible for the same violations of LUST. That is the result under the Court's Order.

6. IMPLIED PRIVATE RIGHT OF ACTION

60. If a private right of action exists for citizens seeking damages for corrective/remediation under LUST, then a private right of action for bodily injury must also exist, as it is created under the same statutes. That is a fair and reasonable conclusion. As stated above, the legislature did not discriminate between the two types of private rights of action when it enacted the LUST laws.

61. Why would LUST recognize reimbursement/indemnification for both corrective action claims, and bodily injury claims, if there is no underlying private right of action recognized for them? Third party bodily injury claims that arise due to noncompliance with LUST are clearly envisioned. If plaintiff in the case at bar is not a protected member of the class, i.e. the public, that LUST was designed to protect, then who would be?

62. The Corgan, Rodgers, and Sawyer cases cited in the Court order actually support plaintiff's position that she has, if not an express, then a strong implied private right of action under LUST. Of course, none of the statutory schemes in the above cases,

unlike IEPA and LUST (1) were public health, safety, and environmental statutory schemes, (2) none imposed strict liability, (3) none had similar indemnification clauses, (4) none had financial responsibility requirements, (5) none had similar definitions as found in LUST, and (6) none provided for statutory punitive damages considerations for violations of it's terms, as a matter of law, as found in 5/42(h)(1)-(8).

63. A plain comparison of each of the above cases statutory schemes preamble statute, which enunciates their purpose and public policies, to the IEPA preamble at 415 ILCS 5/2(a)(i)(v)(vi)(vii), shows, without question, the legislatures' clear, strong, intent that plaintiff in the case at bar, has, at a minimum, an implied private right of action for her bodily injuries under the IEPA and LUST. If the plaintiff's in Corgan, Rodgers, Sawyer cases had an implied private right of action, then plaintiff here surely does.

64. An objective reading of the Gasoline Storage Act, 430 ILCS 15.(1)-(7) and Davis v. Marathon, 1976 Ill. LEXIS 383, further supports plaintiff's position.

65. This Courts' request for language that is, "direct, firm, and explicitly stated," has never been required by Illinois case law. As the Corgan Court ruled:

> "This Court has held that when a statute is enacted for the protection of a particular class of individuals, a violation of its terms may result in civil as well as criminal liability, **even though the former remedy is not specifically mentioned therein.**" Corgan, 1991 Ill. LEXIS 42, 27 – 28. Accord, Kelsay v. Motorola Inc., 1978 Ill. LEXIS 385, 74 Ill. 2d 172. (emphasis supplied)

66. Plaintiff, here, just as the plaintiff in Corgan are both members of the public, and someone for whom LUST was enacted to protect. Indeed, if not plaintiff, then who was meant to be protected by LUST? Not many plaintiff's meet the definition of "bodily injury" found only in LUST.

67. The more recent case of Pilotto v. Urban Outfitters West, LLC., 2017 Ill. App. LEXIS 48, 2017 Ill. App. (1st) 160844 (2017) is instructive on the issue of an implied private right of action.

68. The Pilotto Court addressed the issue of whether there was a private right of action under the Restroom Access Act. The Federal Northern District Court of Illinois had found no private right of action under the Act since it did not have "express" language providing a private right of action. The Pilotto court noted, "At the forefront, it is a Federal District Court case, thus having no precedential influence over our decision." 2017 Ill. App. LEXIS 48, 32.

69. The four factors to be considered in an implied private right of action analysis are "(1) the plaintiff is a member of the class for whose benefit the statute was enacted, (2) the plaintiff's injury is one the statute was designed to prevent, (3) a private right of action is consistent with the underlying purpose of the statute, and (4) implying a private right of action is necessary to provide an adequate remedy for violation of the statue." Pilotto, 2017 Ill. App. LEXIS 48, 14. (citing Fisher v. Lexington Health Care, Inc., 188 Ill. 2d at 460.)

70. The facts in the case at bar pass the four-part test found in Corgan and Pilotto. First, the plaintiff is a member of the public for whose benefit the IEPA and the LUST statute was enacted. Second, plaintiff's injuries are ones for which LUST was designed to prevent. See, Corgan v. Muehling, 143 Ill. 2d, 296,1991 Ill. LEXIS 42. ("Plaintiff is certainly a member of the public and is, therefore, a member of the class for whose benefit the Act was enacted. Moreover, she was once the patient of defendant, an

individual who allegedly practiced psychology without a valid certificate of registration.") Corgan v. Muehling, 143 Ill. 2d, 296,1991 Ill. LEXIS 42.

71. As stated in Corgan, "the underlying purpose of the Act is to protect the public by prohibiting individuals from practicing or attempting to practice psychology without a valid certificate of registration. The plaintiff was clearly within the class of persons the statute was designed to protect." Corgan, 1991 Ill. LEXIS 42, 26-27. Accord, Pilotto 2017 Ill. LEXIS 48, 12.

72. In the case at bar, the leaking UST which directly caused plaintiff's injuries was also without a valid certificate of registration which would have allowed petroleum to be legally stored in the UST. However, the UST in question had been "Red Tagged", on August 3, 2016, by OSFM, which prohibited any petroleum from being placed in the UST until the Red Tag was removed by the OSFM. The Red Tag was never removed by OSFM. Additionally, there is no dispute that the UST in question had been placed out of service by Defendant Speedway on November 7, 2016, as it was defective and not safe to store petroleum. It was never legally put back in service.

73. The IEPA, and LUST, without question, were designed to prevent bodily injuries, as that term is defined by LUST, as well as environmental damage from leaking USTs.

74. Concerning the third element, a private right of action is consistent with the underlying purpose of the IEPA and LUST, which is to protect the public health, welfare, and safety and prevent injuries from a leaking UST as a result of noncompliance of the LUST statutes.

75. As the Corgan Court stated, "that the implication of a private right is consistent with the underlying purpose of the Act, and the injury to the plaintiff was of the type the Act tried to prevent. Thus, the plaintiff has met the second and third parts of the Sawyer test." Corgan, 1991 Ill. LEXIS 42, 29.

76. As in Corgan, Rodgers, Sawyer, and Pilotto, the compensatory damages plaintiff seeks for her injuries is consistent with the underlying purposes of the IEPA, and LUST.

77. Fourth, implying a private right of action is necessary to provide an adequate remedy for a violation of LUST. A private right of action has only been implied in cases where a statute would be ineffective without the implication. Pilotto, 2017 Ill. App. LEXIS 48, 23.

78. The Corgan, Court noted the Psychologist Registration Act is, "to protect the public from persons who are incompetent and unqualified to rendered psychological services". Likewise, in the case at bar the purpose of LUST is to protect members of the public from defendants who are incompetent and unqualified in dispensing and storing petroleum. The potential danger to public safety, health, and welfare from 10,000 gallons of petroleum suddenly being released into the community's environment is obvious.

79. In the present case the only way plaintiff can be made whole is through the same implied private right of action that a plaintiff seeking corrective/remediation damages enjoys, which includes having the trier of fact consider both the compensatory damages and 5/42(h)(1)-(8) factors in assessing the damages required under the Act.

80. It was a specific UST, RUL A NORTH, which released nearly 10,000 gallons of petroleum into the surrounding environment, which was the direct cause of plaintiff's

burns and injuries sustained on October 20, 2017. Plaintiff's injuries are more definite, and direct, than any of the factual patterns found in cases cited in the Court Order. Based on the facts, statutes involved, and public policy, plaintiff has a stronger implied right of action than the plaintiff's in Kelsay, Corgan, Sawyer, Rodgers, and Pilotto.

81. The authorizing of punitive damages considerations pursuant to 5/42(h)(1)-(8) for violations of LUST further satisfy the fourth prong of the Corgan/Pilotto test. It has long been recognized that punitive damages being authorized for statutory violation(s) necessitates the implication of a private right of action. See, Kelsay v. Motorola Inc., 1978 Ill. LEXIS 385, 74 Ill. 2d 172, 185. (The threat of punitive damages to enforce the policy and purpose behind the Workers' Compensation Act supported creation of an implied retaliatory discharge cause of action.)

82. Further, unlike common law negligence actions, "punitive considerations" have always been permitted when considering damages of IEPA violations. A substantial punitive judgment in the case at bar would likely encourage defendants, and others similarly situated, to voluntary disclose noncompliance; encourage compliance with LUST, prevent/deter future violations of LUST, and thus protect the public health, safety and welfare.

83. None of the defendants LUST violations have yet to be considered/adjudicated by a trier of fact. No remedies or damages for defendant's violations of LUST will occur unless Plaintiff's causes of action premised on LUST are fully adjudicated.

84. Unlike the statutory violations in Kelsay, Rogers, Corgan, Pilotto, and Sawyer the defendants in the case at bar did not violate the LUST law on just one

occasion but, as shown in Plaintiff's Complaint, committed hundreds of violations, including felonies, of environmental laws that are intended to protect and enhance the public health, safety, and welfare. These violations occurred before, during and after the fires and explosions of October 20, 2017.

85. If plaintiff does not have a private right of action for her bodily injuries then owners and operators that strive to voluntarily disclose noncompliance and environmental violations in order to protect the public health, welfare and safety will no longer have any meaningful incentive to voluntarily comply with, or disclose noncompliance of, environmental laws - knowing that there are no consequences in the event their violations result in citizens suffering serious bodily injuries and burns such as in the case at bar. There is no cost/benefit analysis required. This is not good public policy.

86. If defendants such as Marathon/Speedway, and others similarly situated, know that their violations of environmental laws will result in no meaningful ramifications via compensatory and punitive damages when bodily injuries occur, there is certainly no logical reason to comply with the financial responsibility statues enacted by the legislature.

87. The LUST statutes are only effective if they are enforced, and when violators are exposed to both compensatory and punitive damages.

88. For all the above reasons plaintiff respectfully requests this Court to (1) reconsider, and vacate, its Order of October 15, 2021; (2) deny defendant's Motion to Dismiss Counts I, II, and III of Plaintiff's First Amended Compliant; (3) rule that plaintiff does have an express, or implied, private right of action pursuant to LUST, and thus (4)

can seek the remedies of compensatory damages sustained as a result of her bodily injuries and punitive damages pursuant to 5/42(h)(1)-(8).

Respectfully Submitted,

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

LAURA E. RICE, Plaintiff,	)	
v.	)	Case No.: 2018-L-000783
	)	consolidated with
MARATHON PETROLEUM CORP., et al. Defendants.	)	18L-10930

DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION TO RECONSIDER THE COURT'S ORDER OF OCTOBER 15, 2021

Defendants, SPEEDWAY LLC ("Speedway"), MARATHON PETROLEUM CORPORATION ("MPC"), and MANOJ VALIATHARA ("Valiathara") (collectively named hereinafter "Defendants"), by and through their attorneys, LITCHFIELD CAVO LLP, in response to Plaintiffs' Motion to Reconsider ("MTR") this Court's October 15, 2021 ruling (Oct. Order), state as follows:

I. INTRODUCTION

This Court granted Defendants' Motion to Dismiss[1] as to Counts I, II, and III of Plaintiff's First Amended Complaint on October 15, 2021 which attempt to assert a private cause of action under the Illinois Environmental Protection Act ("IEPA"). In its Oct. Order, the Court concluded that "[T]he IEPA, specifically LUST, does not provide for a private right of action for plaintiff's requested remedies." Oct. Order, p. 1. The Court held that Plaintiff's argument for an express private right of action "attempts to identify certain words in various locations of the statute, put them together, and then sum up a conclusory

[1] Defendants' Motion to Dismiss the EPA counts were originally directed to the Amended Complaint. While the dismissal motion was pending, Plaintiff sought leave to file a First Amended Complaint to dismiss the negligence counts but to leave the EPA and Survival counts. The Court granted leave subject to the Motion to Dismiss being applicable to the First Amended Complaint.

argument." *Id.* In holding that there is no implied right of action, the Court determined that

> [T]he purpose of LUST in the context of the whole statute leads this Court to conclude that the statute was not designed to protect against plaintiff's alleged personal injury and property damages and plaintiffs are not within the class designed to be protected by the statute.

Id. at 2. Plaintiff now moves the Court to reconsider its Oct. Order based on numerous alleged errors.

II. STANDARD

Whether to grant a motion to reconsider is a determination resting within the trial court's discretion, subject to reversal only upon an abuse of discretion. *Farley Metals, Inc. v. Barber Colman Co., et al.*, 269 Ill. App. 3d 104, 116 (1st Dist. 1994). The purpose of a motion to reconsider is to apprise the trial court of: (1) newly discovered evidence; (2) changes in the law; (3) or errors in the court's earlier application of the law. *Id.* Plaintiff is only alleging that this Court erred in applying the law as the basis for the motion for reconsideration. See MTR at 2, citing *Nissan Motor Acceptance Corporation v. Abbas Holding I, Inc.*, 976 N.E. 2d 1076 (1st Dist. 2012).

III. ARGUMENT

A. The Court Order Correctly Held That There Is No *Express* Private Right Of Action For Bodily Injury Claims.

Plaintiff seemingly claims that there is an express private right of action under the IEPA, specifically LUST, and points out that Black's Law Dictionary (11th Ed.) differs from Merriam-Webster's definition. MTR at 3. Plaintiff has submitted a 22-page MTR and in response to the motion to dismiss 61 pages and over 300 pages of exhibits. In all of those submissions and at the hearing, Plaintiff has not cited to or quoted the language she relies

on to support her claim that there is a private cause of action for her bodily injury under the IEPA.[2] The reason Plaintiff has not referenced or quoted any provision is that none exists.

Even though the Illinois Supreme Court has not yet ruled on this issue, several courts have held that "the IEPA contains no express private right of action" for bodily injury causes of action. *Chrysler Realty Corp. v. Thomas Indus., Inc.*, 97 F.Supp. 2d 877 (N.D. Ill 2000); *Great Oak v. Begley Co.*, 2003 U.S. Dist. LEXIS 3186; and *Norfolk Southern Ry Co. v Gee Co.*, 2001 U.S. Dist. LEXIS 10784. "Nowhere in the statute is a private actor given the express right to sue". *Great Oak, L.L.C. v. Bregley Co.*, No. 02 C 6496, 2003 WL 880994 at *5 (N.D. Ill March 5, 2003). Furthermore, the IEPA enforcement framework "more than adequately serves the purpose of the statute, and that the statute is not ineffective absent an implied right of action." *Chrysler*, at 881. *See also NBD Bank v. Krueger Ringier, Inc.*, 292 Ill.App. 3d. 691 (1997); *Fisher v. Lexington Health Care Inc.*, 188 Ill. 2d 455 (1999). Plaintiff presents no meaningful argument why this court erred in applying the *Chrysler, Great Oak* and *Gee Co.* rulings that no express right exists. The Court did not err in holding that there is no express private right of action for bodily injury claims.

B. The Court Correctly Held That There Is No *Implied* Private Right Of Action For Bodily Injury Claims.

[2] Counts I-III of the First Amended Complaint and the Amended Complaint do not expressly allege that these claims were for bodily injury as opposed to corrective action and the statutory remedies permitted for corrective actions. Defendants' Motion to Dismiss, Reply and argument at the hearing were focused on private causes of action for corrective actions, not bodily injury. While many of the points made would apply similarly to bodily injury claims under the statute, defense counsel's response to the Court that there is a private cause of action was meant only for corrective actions.

Plaintiff devotes the majority of his motion contending that the Court erred in applying the law to the facts. The gist of his argument is that the court erred in relying on *Chrysler, Great Oak* and *Gee Co.* Plaintiff continues on contending that the Court should have relied on *Davis v. Marathon* and an administrative hearing case.

1. Davis v. Marathon is inapplicable.

Plaintiff relies heavily on *Davis v. Marathon Oil Co.*, 64 Ill. 2d 380 (1976) and asserts that it is "most 'on point' as it involves the application and use of UST laws now found in the Gasoline Storage Act . . .." MTR at 5, ¶15. What plaintiff fails to disclose is that this case has nothing to do with a private right of action under the IEPA. In fact, it has nothing to do with a private right of action at all. The issue in *Davis* was whether two jury instructions should have been given and whether the failure to give one or both jury instructions should result in a new trial. *Davis,* 64 Ill.2d at 389 ("Defendant urges as reversible error the trial court's refusal to give two tendered instructions, each in the form of [IPI] 60.01"), 391 ("We consider now whether the failure to give one or both of the tendered instructions was sufficiently harmful to require a new trial."). As is discussed in subsection __, *infra*, the court has not issued a ruling on jury instructions and none have been proposed.

2. There is no implied right.

The courts in *Chrysler, Great Oak* and *Gee Co.* held there is no implied private right of action for non-corrective actions. The court in *Chrysler* reasoned that IEPA provides for enough effective enforcement mechanisms without the need for any implied private rights and that IEPA's purpose is to protect the environment. *Chrysler*,

97 F.Supp.2d at 880; *see also, Great Oak*, 2003 WL 880994 at *5; *Gee Co.*, 2001 WL 710116 at *16.

In a further attempt to support its argument that this Court erred in applying the law to the facts, Plaintiff resorts to the administrative decision of *Edward Malina v. Jean Day*, 1998 Ill. Envl Lexis 28, PCB #98-54. Plaintiff mistakenly claims that the Illinois Pollution Control Board's *administrative* decision "trumps" the *Chrysler's* court *judicial* decision. Plaintiff claims that the Illinois Supreme Court would be more persuaded by the Board's administrative decision than by the three federal decisions which carefully reviewed and analyzed an Illinois First District decision of *NBD Bank v. Krueger Ringier, Inc.*, 292 Ill.App.3d 691 (1st Dist. 1997) and the Illinois Supreme Court's ruling in *Fischer, et al. v. Lexington Health Care, Inc., et al.*, 188 Ill.2d 455 (1999).

Not only should this Court find *Malina* more persuasive because it is an administrative ruling but also because it is distinguishable. In *Malina,* the PCB only addressed the Board's "authority to award cleanup costs to private parties for a violation of the Act." *Malina*, 1998 WL 29953 at *2. Plaintiff contends that *Malina* "firmly rejected the NBD decision." MTR at 4, ¶14. Plaintiff is wrong. Rather the PCB distinguished the *NBD Bank* decision. *Id.* at *2. Specifically the PCB stated:

> However, the NBD decision does not impact the line of Board decisions finding authority ***to award cleanup costs*** for a violation of the Act. NBD involves an action in tort to recover cleanup costs . . ..
>
> The NBD court does not address the availability of cleanup costs as a remedy for a violation of the Act . . .. ***The issue is, rather, whether or not cleanup costs are a remedy that the Board can award for a violation of the Act.*** The Board has consistently held that such costs

> are a potential remedy, and ***the Board finds nothing in the NBD court's decision which affects our prior holdings in this regard.***

Id. (emphasis added).

Therefore, this Court did not err or misapply the law in relying on *Chrysler, Great Oak and Gee Co.* These three cases are still applicable law, and are more closely aligned with the issues in this case.

3. Plaintiff cannot meet the 4-prong test established by *Pilotto v. Urban Outfitters.*

When there is no explicit statutory language regarding the private right to sue, "a court may determine that a private right of action is implied." *Fisher v. Lexington Health Care, Inc.*, 188 Ill. 2d 455 (1999). The law requires the court to apply a 4-prong test to determine the existence of an implied right of action, which are:

> (1) the plaintiff is a member of the class for whose benefit the statute was enacted, (2) the plaintiff's injury is one the statute was designed to prevent, (3) a private right of action is consistent with the underlying purpose of the statute, and (4) implying a private right of action is necessary to provide an adequate remedy for violations of the statute.

Pilotto v. Urban Outfitters West, L.L.C., 2017 IL App (1st) 160844, 72 N.E.3d 772 (Ill. 1st 2017).

Relying on *Chrysler, Great Oak* and *Gee Co.*, this Court held,

> The purpose of the IEPA, specifically 415 ILCS 5/57 for LUST, is to adopt procedures for the remediation of underground storage tank sites due to the release of petroleum and other substances, establish and provide procedures to oversee and review remediation, establish a State fund, establish requirements for owners and operators to seek payment and audit an approve corrective action. The purpose of LUST in the context of the whole statute leads this Court to conclude that the statute was not designed to protect against plaintiff's alleged personal injury and property damage and plaintiffs are not within the class designed to be protected by the statute.

Oct. Order at 3. This is consistent with the ruling in *Chrysler* which held that the purpose of the IEPA and companion regulations "is to protect the environment and minimize environmental change." Chrysler, 97 F.Supp.2d at 880, (citations omitted). Plaintiff does not cite to any decisions or authority that show a different purpose for the IEPA or LUST.

Lastly, Plaintiff also does not meet the fourth factor that implying a right is necessary to provide an adequate remedy for violations of the statute. Courts have already held that "enforcement of the statute has been left to the Attorney General or State's Attorney." *Chrysler,* 97 F.Supp.2d at 878; *see also Gee Co.,* 2001 WL 710116 at *15; G*reat Oak*, 2003 WL 880994 at *5. Not only is there already an established means of enforcing the statute, the State of Illinois did enforce the statute when it filed an action against Speedway. *See People v. Speedway LLC.,* 2017 CH001505 (Cook County). That action resulted in a judgment against Speedway.

Plaintiff's motion for reconsideration contends that there is an implied private right of action under IEPA/LUST because plaintiff is a member of the class sought to be protected. Plaintiff relies on two cases which are inapplicable. The first is *Corgan v. Muehling.* 143 Ill.2d 296. That case involved the Psychologist Registration Act; there is no reference to, or analysis of the IEPA or LUST. The second case *Pilotto v. Urban Outfitters West, LLC.* 2017 IL.App. 160844 (1st Dist.). In *Pilotto,* the act at issue was the Restroom Access Act. While both cases undertake an analysis of the four-part test, they do not provide any analysis of the purpose of the IEPA or LUST. As

such, neither case is helpful here and Plaintiff is unable to challenge the purpose identified by this Court and the courts in *Chrysler, Great Oak* and *Gee Co.*

Thus, the Court did not err in its holding that there is no implied private cause of action under the IEPA or LUST.

4. The 2003 amendment to the penalties allowed are not for implied rights of action.

Defendants have addressed the right of a citizen to pursue corrective action in its Motion to Dismiss the EPA Counts and in its Reply and incorporate those arguments here. In short, the right of a citizen is only to pursue corrective actions. In order to pursue a corrective action and to seek the penalties set forth in the IEPA, plaintiff must first demonstrate that the State failed to pursue remedies and plaintiff must exhaust all administrative remedies. One of those administrative remedies would be to file an action before the PCB. *See Gee Co.*, 2001 WL 710116 at *15 ("any private action under the IEPA must first be brought before the Pollution Control Board"). However, it is likely that the PCB would have dismissed a PCB claim since the State of Illinois had already filed suit against Speedway. For these reasons, the change in law set forth in the MTR do not impact the Court's Oct. Order granting Defendants' Motion to Dismiss the EPA Counts.

C. The Court Order Does Not Render Meaningless the Financial Responsibility Requirements, Nor Take LUST Out of Compliance Because the LUST Fund is Not Designed to Compensate for Personal Injuries.

According to 415 ILCS 5, the LUST Trust Fund provides for monetary relief to be used in corrective actions to remediate leaks from underground storage tanks.

Nowhere in the statute there is a provision that the funds can be used to compensate individuals for personal injuries.

Plaintiff erroneously alleges that denying a personal injury action under IEPA/LUST would render the financial requirements meaningless, or even take the program out of federal compliance. Plaintiff goes as far as affirming that "to allow only corrective/remediation claimants to seeks damages" under IEPA/LUST means that defendants would "face no meaningful consequences." Furthermore, Plaintiff states that environmental laws are "primarily designed and intended to protect and prevent injuries to the public."

The IEPA/LUST legislation provides for extensive penalties and fines that are in complete agreement with the financial responsibility and federal compliance requirements. Moreover, IEPA/LUST violators face serious and very meaningful consequences that are expressly written in the legislation, without the need for the courts to create an unintended personal injury private action to make the compliance with the legislation effective. Therefore, the Court Order does not render financial responsibility and federal compliance requirements meaningless because the LUST Fund is not designed to compensate for personal injuries and the IEPA/LUST legislation allows for enough meaningful consequences to prevent violations.

D. The Court Order Does Not Violate Plaintiff's Equal Protection and Due Process Rights Because Plaintiff Is Pursing Her Claims Here.

Plaintiff claims that denying compensation for bodily injuries under IEPA/LUST is a violation of due process and equal protection rights because it would not allow private plaintiffs to recover for personal injuries. However, Plaintiff is currently

pursuing this claim for her personal injury. Plaintiff has not articulated why the damages she is seeking here will not completely provide the remedies she is entitled to for the personal injury to Rice if she prevails. Notably, plaintiff does not make a legal argument that her due process rights are violated and that she is not afforded equal protection. Plaintiff cites to no case law or other authority to support this claim. Her claim that she may be entitled to punitive damages under the IEPA (415 ILCS 5/42(h). Again, plaintiff has cited no authority that would permit her to pursue a private cause of action under the IEPA/LUST. It should also be noted that, in the companion case, *Patterson, et al. v. Speedway, et al.*, Judge O'Brien reviewed and denied two motions for leave to seek punitive damages. The relevant facts forming the basis of those motions are identical to this case and were critical in the consolidation of these two cases for discovery purposes.

As noted above, plaintiff is pursuing her legal right for the injury suffered by Rice. Therefore, this Court Order does not violate Plaintiff's due process and equal protection rights.

E. The Court Did Not Deny Jury Instructions Under IPI 60.01.

Plaintiff claims that "On page 3, the order precludes plaintiff's from publishing, and having the jury instructed on, the multiple LUST violations pursuant to IPI 60.01." MTR at 5, ¶16. Plaintiff's contention is incorrect. The Oct. Order reads:

> During arguments at the hearing on October 13, 2021, this Court did not address two factors required to establish a private right of action because the two factors match the inquiry to determine whether the Illinois Pattern Jury Instruction (Civil) 60.01 would be given during trial . . .."

Oct. Order at 2. There is no further reference to IPI 60.01. In short, there is no ruling on any jury instructions. The Court has not been presented with any jury instructions for consideration at this stage.

IV. CONCLUSION

Plaintiff's Motion to Reconsider the Court Order of October 15, 2021 should be DENIED because the Court Order correctly applied the law and ruled the inexistence of a private right of action relying on existing, well-established law. The law is that Plaintiff has no express or implied private right of action under IEPA/LUST. Plaintiff failed to meet the 4-prong test established by *Pilotto v. Urban Outfitters*. For these reasons set forth herein, the court should deny Plaintiff's Motion to Reconsider.

Dated: December 15, 2021

Respectfully Submitted,

By: /s/ Thomas M. Crawford
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Hearing Date: No hearing scheduled
Location: <<CourtRoomNumber>>
Judge: Calendar, 37

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

LAURA E. RICE, as Special Representative of the Estate of MARGARET L. RICE, deceased Plaintiffs, vs. MARATHON PETROLEUM CORPORATION, a Delaware Corporation, SPEEDWAY, LLC., a Delaware Limited Liability Company, and MANOJ VALIATHARA, Defendants.	No.: 18 L 000783 Consolidated w/18 L 010930

PLAINTIFF'S REPLY TO DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION TO RECONSIDER THE COURT ORDER OF OCTOBER 15, 2021

Now comes the plaintiff, Laura E. Rice, as Special Representative of the Estate of Margaret L. Rice by and through her attorneys BUDIN LAW OFFICES and for her reply to defendant's response to plaintiff's motion to reconsider states as follows:

I. INTRODUCTION

1. Critically, defendants have never disputed the fact that 42 USC, Section 6991c is the law of the land, including Illinois, concerning underground storage tanks. It clearly mandates defendants, MPC/Speedway, "to maintain evidence of financial responsibility for taking corrective action **and compensating third-parties for bodily injury and property damage caused by sudden and non-sudden accidental releases arising from operating an underground storage tank."** See, 6991c(a)(6) Unless and

[1] Defendants interpretation of the Court Order concerning pleadings is an error. Plaintiff will rely upon the plain language of the Court Order concerning pleadings. Plaintiff's Motion for Reconsideration concerns itself only with Counts I, II, and III of her First Amended Complaint at Law.

until defendants can show this Court otherwise it must strongly consider reversing its ruling of October 15, 2021, finding plaintiff is not a protected person under LUST, which must follow the mandates of 6991c(a)(6).

2. The Court Order[1] of October 15, 2021 (hereafter "Order") is a clear abdication of Defendant's financial responsibility and liability under LUST for damages caused by leaking UST's. It makes the mandate completely ineffective, worthless, and absurd as it precludes a bodily injury claim due to a leaking UST.

3. The case at Bar is clearly about the illegal transportation, storage, and release of gasoline from the UST at Store #7445 causing personal injuries to Plaintiff. The grossly negligent acts and omissions of Defendants are contained, in part, in Plaintiff's Ex. #2, 12/16/21 Report of Wolf H. Koch, Ph.D. attached, with Curriculum Vitae. Plaintiff's burns and treatment are discussed in Plaintiff's Ex. #3, 12/20/21 Medical Report of Anjay Kumar Khandelwal, M.D. attached with Curriculum Vitae. Mr. Koch's deposition was taken on 12/28/21.

A. Davis v. Marathon

4. Unless and until defendants produce case law ruling and instructing otherwise, this Court should strongly consider the ruling of Davis v. Marathon and vacate its Order of October 15, 2021. Defendants refuse to address the facts of Davis, have never produced any credible authority in support of their positions, and certainly no case law that contradicts the rulings of the Davis Court.

5. The Davis decision clearly allows a cause of action for personal injuries due to violations of the Gasoline Storage Act, which administers LUST. (See, Plaintiff's Motion to Reconsider, p. 5-8)

6. If the Plaintiff in Davis, had a cause of action under the Gasoline Storage Act, then so does Plaintiff in the case at bar. It is not disputed that Plaintiff suffered major severe second degree burns directly caused by the illegal storage, and release, of petroleum from Defendant's MPC/Speedway's UST at Store #7445.

II. PLAINTIFF'S RESPLY/ISSUES

1. CHRYSLER TRILOGY and NBD

7. For the first time in this litigation defendants cite to the Chrysler trilogy of federal cases and the NBD case this Court relied upon in its Order. If Defendant's really believed the Chrysler trilogy and NBD, decisions were credible authority they likely would have relied on them much earlier in this litigation. Plaintiff relies upon her earlier discussion(s) of the Chrysler trilogy and NBD decisions as Defendants have failed to address that analysis. See, Plaintiff's Motion to Reconsider p. 3-5; Plaintiff's Memorandum of Law on whether LUST provides Plaintiff a private right of action, p. 21-24, p. 37-42 (hereafter "Private Right Memo")

2. Express Private Right of Action for Bodily Injury Claims Under LUST

8. Defendants cite no new facts or law on this issue. Thus, Plaintiff relies upon the analysis stated in her Motion to Reconsider (hereinafter "MTR"). Unless and until Defendants respond with contrary authority to Plaintiff's arguments, which are supported by case law and relevant statutes, it is Plaintiff's position that under LUST she has an express cause of action for her personal injuries caused by Defendants' leaking underground storage tank (hereinafter "UST").

3. Implied Right of Action/Pilotto/Corgan/Sawyer/Kelsay

9. Defendants focus is on the fourth prong of the Pilotto, Corgan, Sawyer, analysis. Defendants fail to address the rulings found in Kelsay.

10. Defendants apparently are unable to understand the distinctions between statutory punitive damage rules such as 415 ILCS 5/42(h)(1)(8), and common law punitive principles. The fourth prong of Pilotto is satisfied by the remedy the statutory punitive damages considerations provide Plaintiff pursuant to LUST. It is only through Counts I, II, and III of her First Amended Complaint. The LUST counts, that the jury is authorized to consider the damage factors in 42(h)(1)-(8). This satisfies the fourth prong in the implied right of action analysis found in Corgan, Pilotto, Sawyer and Kelsay, and (See, Plaintiff's Right Memo p. 37-42) and MTR, p. 15-21.

11. One of the major differences between punitive damages awarded in a common law case versus a statutory punitive damage remedy is that there will be no comparison between the compensatory damages and punitive damages awarded. There are no limits on the statutory punitive considerations authorized under 415 ILCS 5/42(h)1-8. The damages awarded under Counts I, II, and III of her First Amended Complaint will be imposed pursuant to a percentage of each Defendant's gross annual sales income and other factors. This determination is left to the discretion of the trier of fact. (See, People ex. rel. Ryan v. McHenry Shores Water Company, 1998 Ill. App. LEXIS 184, 19-22, 295 Ill. App. 3d 628 (2nd Dist. 1998) (33% of gross annual revenue awarded is not arbitrary, even if it may lead to bankruptcy protection) The distinction between common law and statutory punitive awards is explained in Froud v. Celotex Corporation, 1983 Ill. LEXIS 476, (1983) (See, Plaintiff's Motion for Punitive Damages by Operation of Law, p. 22-25)

12. Another difference is Plaintiff's claim pursuant to LUST survive her death – independent of the common law Survival Act applicable to common law negligence actions.

13. There is no other adequate cause of action or remedy available to plaintiff for the injuries and burns she suffered as a direct result of defendants' multiple violations of UST laws. The only adequate remedy for her damages/injuries is through Counts I, II and III of her First Amended Complaint. It is only through LUST that she may request a jury to consider the punitive factors found in 42(h).

14. Plaintiff is one of the very specific, limited, and rare class of Plaintiff's whose injuries/burns were caused by a leaking UST. No one disputes that. Defendants are required to have liability insurance in the event this unique Plaintiff is created by Defendants violations of LUST and laws and regulations.

15. Defendants continue to claim that a judgment was entered against them. This Court is aware that this is a false claim. Defendants entered into a Consent Decree on Environmental Violations not related to leaking USTs under LUST. As this Court knows, a plain reading of the State's Complaint verifies that Defendants have never had to answer for their multiple violations of LUST as shown in Plaintiff' First Amended Complaint At Law. (See, Plaintiff's First Amended Complaint At Law, pg. 41-76)

4. 2003 Amendments (Article XII, Penalties, 415 ILCS 5/42)

16. Defendants claim, without citing any authority, that a citizen's right to file a lawsuit for noncompliance with environmental laws is limited to corrective actions. Thus, Plaintiff will rely on her earlier discussion of the 2003 Amendments in her MTR, p. 8-9.

Defendants are urged to bring the limiting statute(s) they rely on to the hearing on this Motion so the Court can make an informed decision.

5. Financial Responsibility Requirements For USTs

17. The Court Order does render meaningless the Financial Responsibility Requirements for USTs, as stated in both Federal and Illinois UST laws. It clearly takes LUST out of Federal compliance with 42 USC 6991(c).

18. As stated in the introduction, supra, unless, and until, defendants can cite any authority to this Court that overrules 42 USC 6991c(6) the Gasoline Storage Act, LUST, all the Financial Responsibility/Liability Statutes cited by plaintiff; and Davis v. Marathon, it is clear that the Order renders the financial responsibility/liability requirements ineffective and meaningless.

19. Defendants do not deny that plaintiff, Margaret Rice fits squarely into the definition of "bodily injury" found in LUST and other financial/liability statutes, including the Gasoline Storage Act, which implements and administers LUST, all of which require Defendants MPC/Speedway to prove financial responsibility for their liability, in the event a member of the public sustains bodily injuries by a leaking UST. Defendants have never cited to any contrary statutes.

6. PUBLIC POLICY

20. Defendants have never refuted Plaintiff's already referenced case law, statutes, Illinois Constitution and the Illinois Environmental Protection Act on the issue of Public Policy of the IEPA and LUST. The statutes and law already cited speak for themselves. Further, Defendants have never produced any evidence contrary to IEPA representative, Steve Putrich, as stated in Plaintiff's MTR p. 12-14. This Court's

statement on the Public Policy of IEPA and LUST is not complete as stated in the Order. Mr. Putrich's expert testimony on Public Policy should control this issue.

7. Equal Protection/Due Process Violations Effects

21. Defendants do not address this issue. Rather, defendants encourage active discrimination be practiced by applying the LUST statutes only to corrective actions filed by citizens.

22. Defendants have advanced no argument as to why this Court should apply UST statutes in a discriminatory fashion when the statutes themselves do not limit their application only to corrective actions. In fact, all expressly recognize, compensation for, bodily injury caused by leaking UST's due to a defendants' noncompliance with LUST. The Order results in prima facie equal protection and due process violations under both Federal and Illinois law.

8. Legislative Intent

23. Defendants agree that this Court is facing an issue of first impression. Yet, defendants have never addressed the issue of legislative intent and statutory construction advanced by plaintiff. Further, Defendants completely fail to engage in any type of basic, fundamental statutory construction in examining the relevant UST statutes.

9. Judge O'Brien Rulings

24. This is Defendant's only new claim. It appears to be a collateral estoppel argument. Defendants state, "That in the companion case Patterson, et. al. v. Speedway, et. al. Judge O'Brien reviewed and denied two motions to seek punitive damages." Defendant's conveniently ignore the fact that the Patterson Complaints did not have MPC as a Defendant. Further, the Patterson Complaints were based on common law claims

and not on violations of LUST, as stated in Plaintiff's First Amended Complaint at Law Counts, I, II and III.

25. Defendants further claim that, "The relevant facts forming the basis of those motions are identical to this case and were critical in the consolidation of these two cases for discovery purposes." This statement is an outright falsehood. Defendants have always claimed that the Rice and Patterson cases have nothing in common on either liability or damages. They never sought to consolidate the cases.

26. Defendants fail to tell this Court that Plaintiff's Rice and Patterson, on two separate occasions, filed Joint Motions to Consolidate the cases for discovery purposes only, for reasons of judicial economy and to save all the parties time. On both occasions, defendants filed written objections to consolidating the cases and, on the record, in open Court, vehemently objected to the consolidations because the cases, "were completely opposite and had nothing to do with each other." In fact, Defendant's attorneys were so insistent that the cases had no similarities at all that their request to deny the second Joint Motion to Consolidate was, based on Defendants strong request, granted, with prejudice. (See, Ex. 4, attached, September 13, 2019, Court Order of Judge James P. Flannery, denying with prejudice, Plaintiff's second joint motion to consolidate)

27. After vigorously objecting, on two separate occasions, to consolidating the cases, because they were so dissimilar and not related, for defendants to now tell this Court that the facts, "are identical" is outrageous.

28. On April 26, 2019, before Judge Marcia Maras, Plaintiff and defendants agreed to an August 11, 2020, trial date. At the time that the trial date was given

defendants expressly assured the Court that there were no third-party pleadings pending, and that none would be forthcoming.

29. On or about January 22, 2020, on the last possible date to file third-party Complaints, defendants filed 11 third-party Complaints against a whole host of non-liable entities, all of which are not active in this litigation, (with Defendants appealing the Good Faith Settlements for the minimal settlements accepted by Plaintiffs Rice and Patterson).

30. Defendants even filed third-party Complaints against other entities after the statute of limitation had expired.

31. After being served, the Third-Party Defendants reviewed the operative facts found in both Rice and Patterson, and filed their Motion to Consolidate the two cases for discovery purposes, which was granted on December 17, 2020. That is how the cases were consolidated.

32. Defendant's desperate, deliberate attempt at deceiving this Court illustrates the weakness of Defendant's arguments, none of which have ever been supported with statutory or caselaw.

III. CONCLUSION

WHEREFORE, for the reasons stated in plaintiff Motion to Reconsider the Court Order of October 15, 2021, respectfully requests this Court to:

(1) Vacate the Order of October 15, 2021;
(2) Deny defendants Motion to Dismiss Counts I, II, and III of Plaintiff's First Amended Complaint;
(3) Rule that plaintiff does have an express, or implied private right of action pursuant to LUST; and
(4) Grant plaintiff's Motion for Punitive Damages by operation of Law as to Counts I, II, and III of her First Amended Complaint pursuant to 415 ILCS 5/57 et. seq. LUST.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure I certify that the statements set forth in this instrument are true and correct except as to matters therein stated to be on information and belief and as to such matters I certify that I verily believe the same to be true.

John J Budin

Respectfully Submitted:

BUDIN LAW OFFICES

Attorneys for Plaintiff

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IN THE CIRCUIT COURT OF COOK COUNTY ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

LAURA RICE, as Special Representative of the Estate of MARGARET RICE, Deceased,	)	
Plaintiff,	)	
	)	18 L 783 *consolidated with*
v.	)	18 L 10930
	)	
MARATHON PETROLUEM CORPORATION, a Delaware Corporation, SPEEDWAY, LLC, a Delaware Limited Liability Company, and MANOJ VALIATHARA,	)	Hon. James M. Varga, *Judge Presiding*
Defendants/Third-Party Plaintiffs.	)	

NOTICE OF APPEAL

Plaintiff-Appellant LAURA RICE, Special Representative for MARGARET RICE, Deceased, by her attorney, appeals to the Appellate Court of Illinois for the First District from the following orders entered in this matter in the Circuit Court of Cook County:

> The Order of October 15, 2021 dismissing Count's I, II and III of Plaintiff's First Amended Complaint. Plaintiff's Motion for Reconsideration of the Order of October 15, 2021 was denied on January 26, 2022.

By this appeal, Plaintiff will ask the Appellate Court to reverse the order of October 15, 2021 and remand this cause of action with directions consistent with the Appellate Court's decision, or for such other and further relief as the Appellate Court may deem just and proper.

Respectfully Submitted,

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE COOK JUDICIAL CIRCUIT
COOK COUNTY, ILLINOIS

LAURA RICE

Plaintiff/Petitioner

v.

MARATHON PETROLUEM CORPORATION, ET AL.

Defendant/Respondent

Reviewing Court No: 1-22-0155
Circuit Court/Agency No: 2018L000783
Trial Judge/Hearing Officer: JAMES M. VARGA

CERTIFICATION OF RECORD

The record has been prepared and certified in the form required for transmission to the reviewing court. It consists of:

18 Volume(s) of the Common Law Record, containing 32719 pages
1 Volume(s) of the Report of Proceedings, containing 74 pages
0 Volume(s) of the Exhibits, containing 0 pages

I hereby certify this record pursuant to Supreme Court Rule 324, this 17 DAY OF MAY, 2022

Iris Martinez

(Clerk of the Circuit Court or Administrative Agency)

IRIS MARTINEZ, CLERK OF THE COOK JUDICIAL CIRCUIT COURT ©
CHICAGO, ILLINOIS 60602

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE COOK JUDICIAL CIRCUIT
COOK COUNTY, ILLINOIS

LAURA RICE

Plaintiff/Petitioner

v.

MARATHON PETROLUEM CORPORATION, ET AL.

Defendant/Respondent

Reviewing Court No: 1-22-0155
Circuit Court/Agency No: 2018L000783
Trial Judge/Hearing Officer: JAMES M. VARGA

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