

counsel, for their Second Amended Complaint against Defendants, Waste Management of Illinois, Inc. ("Waste Management"), Morton International, Inc. ("Morton"), Honeywell, Inc. ("Honeywell"), Exxon Mobil Corporation ("Exxon"), H.B. Fuller Company ("H.B. Fuller"), BFI Waste Systems of North America, Inc., individually and d/b/a Browning-Ferris Industries ("Browning-Ferris"), Mail-Well Envelope Company ("Mail-Well"), Weber Foreign Manufacturing, Inc. f/k/a Ink Specialties Company, Inc. ("Ink Specialties"), and Wells Manufacturing Company ("Wells Manufacturing"), state as follows:

NATURE OF ACTION

1. This is a class action brought by and on behalf of all persons and non-governmental entities who: currently, or since September 2003, own(ed) property or reside(d) on property within the subdivisions commonly referred to as Hillcrest, Lakeview Villa, Spencer Highlands, Elmcrest, Wellsmere Heights, North Shore, and Garland Road South; and relied upon a private well as a source of residential water ("the Class"). A figure, identifying the geographic boundaries of the Class, is attached as Exhibit A and incorporated herein by reference.

2. Properties throughout the Class are contaminated with hazardous substances, including vinyl chloride, from the Wauconda Sand & Gravel Pit ("the Landfill").

3. Vinyl chloride is a known human carcinogen. This cancer causing chemical was recently discovered in the groundwater aquifer underneath the Class that serves as the source of potable and other usable water for Class area families. Further, because vinyl chloride is a volatile organic compound it is known to vaporize. This vapor is believed to create an additional exposure pathway for residents of the Class.

4. This Second Amended Complaint details -- and ultimately prays that Defendants be held accountable for--their knowledge, acts and omissions which are responsible for the vinyl

chloride releases at the Landfill, and contamination of Class Members' drinking water supply. In particular, although Class area residents only discovered the wrongful contamination of their drinking water aquifer in September 2003 or later, Defendants knew of the potential threats and actual contamination of the Class area much sooner. In addition, even after Class area residents discovered the presence of vinyl chloride in their drinking water aquifer, Defendants and others publicly minimized both the scope and nature of the contamination. At the same time, however, Defendants were privately discussing the feasibility of--although not committing to finance--connecting certain Class area residents to a municipal water source. After these private discussions became public, Defendants threatened to cease all further work toward obtaining clean water for Class area families in the event this lawsuit was filed.

5. This Second Amended Complaint seeks the recovery of: investigative and other response costs incurred because of releases of hazardous substances from the Landfill; compensatory damages caused by Defendants' continuing acts and omissions related to the operation and maintenance of the Landfill; and punitive damages for the purpose of punishing Defendants for, *inter alia*, permitting vinyl chloride to migrate into the Class area, and failing to warn Class area families of the contamination of the drinking water aquifer with vinyl chloride.

PLAINTIFFS

6. Plaintiffs, Gene and Gary Voss are citizens of the State of Illinois, residing at 25364 West Bonner Road, Wauconda.

7. Plaintiffs, Catherine and Chris Molenaur are citizens of the State of Illinois, residing at 28657 North Washington, Wauconda.

DEFENDANTS

8. Defendant Waste Management is an Illinois corporation authorized to do business, and actually doing business, in the State of Illinois.

9. Defendant Morton is an Indiana corporation authorized to do business, and actually doing business, in the State of Illinois.

10. Defendant Honeywell is a Delaware corporation authorized to do business, and actually doing business, in the State of Illinois.

11. Defendant Exxon is a New Jersey corporation authorized to do business, and actually doing business, in the State of Illinois.

12. Defendant H.B. Fuller is a Minnesota corporation authorized to do business, and actually doing business, in the State of Illinois.

13. Defendant Browning-Ferris is a Delaware corporation authorized to do business, and actually doing business, in the State of Illinois.

14. Defendant Mail-Well is a Delaware corporation authorized to do business, and actually doing business, in the State of Illinois.

15. Defendant Ink Specialties is an Illinois corporation authorized to do business, and actually doing business, in the State of Illinois.

16. Defendant Wells Manufacturing is an Illinois corporation authorized to do business, and actually doing business, in the State of Illinois.

17. Defendants have been identified by the United States Environmental Protection Agency (“USEPA”) as potentially responsible parties with respect to hazardous substances in the Landfill, and, in response to USEPA’s demand that they do so, have undertaken investigative and limited remedial activities at the Landfill and the surrounding area. Defendants are

obligated--and have actually undertaken, albeit inadequately and without due consideration for the health and property of Class members -- to, *inter alia*: investigate the nature and extent of the contamination caused by their continuing operation and maintenance of the Landfill; sample residential and monitoring wells in the Class area; interpret the data generated by this sampling; report to USEPA and the public about the results of Defendants' sampling; study the feasibility of providing a permanent alternative source of clean water to Class area families; and, in the meantime, temporarily pay for bottled water for residents in the Class area.

18. Defendants have formed a committee commonly known as, and have even received permits in the name of, the Wauconda Task Group ("WTG"). This committee has undertaken to act as the alter ego of Defendants collectively by, *inter alia*, reporting to public entities like USEPA, IEPA and the Lake County Health Department about conditions at and around the Landfill, and disseminating (sometimes, mis-) information to the public about the nature and extent of the contamination.

JURISDICTION AND VENUE

19. This Court has federal question jurisdiction over this matter pursuant to 28 U.S.C. § 1331 because this case arises under the laws of the United States of America; specifically, because Count I is predicated upon and seeks relief pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607.

20. This Court has supplemental jurisdiction over the Illinois state law claims set forth in Counts II through V pursuant to 28 U.S.C. § 1367.

21. Pursuant to 42 U.S.C. § 9613(b) and 28 U.S.C. § 1391(b), venue is proper in this Court because this case arises out of actions occurring at, and pertaining to property located in, incorporated and unincorporated Wauconda, Lake County, Illinois, within this judicial district.

THE LANDFILL

22. The Landfill is a 74-acre site located in Wauconda, Lake County, Illinois. After being operated as a sand and gravel pit, open areas of the Landfill were later backfilled with industrial and other waste. For decades the Landfill was operated without a permit. Many violations were issued relating to operation of the Landfill, including failing to control leachate releases. Fines were also imposed.

23. For years, Defendants have operated, maintained and otherwise controlled the Landfill. There is not a clay (or any other) liner beneath the Landfill. Indeed, there is no continuous confining layer below the Landfill at all. Hazardous substances, including vinyl chloride, were dumped and remain in and below the water table.

24. Hazardous substances from the Landfill, including vinyl chloride, have contaminated both the upper and lower sand and gravel aquifers which underlie both the Landfill and the Class area.

CLASS ALLEGATIONS

25. Plaintiffs bring each of the claims in this action in their own names and on behalf of a class of all persons similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure.

26. This is a class action brought by and on behalf of all persons and non-governmental entities who: currently, or since September 2003, own(ed) property or reside(d) on property within the subdivisions commonly referred to as Hillcrest, Lakeview Villa, Spencer Highlands, Elmcrest, Wellsmere Heights, North Shore, and Garland Road South; and relied upon a private well as a source of residential water.

27. The Class consists of more than 400 families, and is accordingly so numerous that joinder of all members is impractical.

28. There are core questions of law and fact that are common to each member of the Class, such as: whether there have been releases of hazardous substances, including vinyl chloride, at the Landfill while under the Defendants' operation, maintenance and/or control; whether Defendants have acted reasonably to prevent releases from the Landfill of hazardous substances so as to prevent their release into the Class area; whether Defendants have fairly and accurately communicated information to the Class about the nature and extent of the contamination; whether contaminants from the Landfill, including vinyl chloride, have impacted the drinking water aquifer beneath the Class area; and whether contamination of the upper aquifer with vinyl chloride, or other volatile organic compounds, has caused vapor intrusion in the Class area. Further, the types of relief sought by Plaintiffs are common to the Class.

29. Plaintiffs' claims are typical of the claims of the Class. All claims are based upon Defendants' common course of conduct.

30. Plaintiffs will fairly and adequately represent and protect the interests of the Class.

31. Plaintiffs have retained counsel who is competent and experienced in class action litigation, including environmental suits such as this one that involve both CERCLA and common law claims.

COUNT I

CERCLA COST RECOVERY, 42 U.S.C. § 9607(a)

32. Plaintiffs, individually and on behalf of the Class defined herein, repeat, reallege and incorporate by reference paragraphs 1 through 31 of the Second Amended Complaint as paragraph 32 of Count I, as though fully set forth herein.

33. Defendants, Waste Management, Morton, Honeywell, Exxon, H.B. Fuller, Browning-Ferris, Mail-Well, Ink Specialties, and Wells Manufacturing, are "persons" as defined by Section 101(21) of CERCLA, 42 U.S.C. §9601(21).

34. Defendants are "owners" and/or "operators" of a "facility" and/or "generators" and/or "transporters" of "hazardous substances" within the meaning of CERCLA, 42 U.S.C. §9601. Defendants are covered persons under 42 U.S.C. §9607(a). As a result, Defendants are liable persons under Section 107(a) of CERCLA, 42 U.S.C. §9607(a).

35. The Landfill is a "facility" as defined by § 101 (9) of CERCLA, 42 U.S.C. § 9601(9).

36. "Releases" of "hazardous substances", including vinyl chloride, from the Landfill into the "environment" are continuing.

37. These releases have resulted in the migration of hazardous substances, including vinyl chloride, into the Class area.

38. As a result of these releases, Plaintiffs and members of the Class have incurred and will continue to incur "response costs" within the meaning of Section 101(23)-(25) of CERCLA, 42 U.S.C. §§ 9601 (23)-(25). All such costs are reasonable and, when applicable, consistent with the National Contingency Plan. Plaintiffs did not pollute the Landfill or otherwise cause the release of hazardous substances, including vinyl chloride, from that facility.

Accordingly, Defendants are strictly liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) for all such costs.

39. Plaintiffs have incurred response costs.

40. As a result of releases of hazardous substances, including vinyl chloride, from the Landfill (a “facility” under § 101 (9) of CERCLA, 42 U.S.C. § 9601(9)), Plaintiffs have incurred and will continue to incur “response costs” within the meaning of Section 101(23)-(25) of CERCLA, 42 U.S.C. §§ 9601 (23)-(25). All such costs are reasonable and, when applicable, consistent with the National Contingency Plan.

COUNT II

NEGLIGENCE

41. Plaintiffs, individually and on behalf of the Class defined herein, repeat, reallege and incorporate by reference paragraphs 1 through 40 of the Second Amended Complaint as paragraph 41 of this Count II, as though fully set forth herein.

42. Defendants had a duty to Plaintiffs and the Class not to permit or allow hazardous substances, including vinyl chloride, at the Landfill to invade adjacent residential properties. Defendants also had a duty to promptly respond to known releases of contaminants in a manner which would prevent further contamination, and otherwise protect Class area properties.

43. Defendants have breached these duties by their negligent acts and omissions in operating, maintaining, and controlling the Landfill and by their failure to prevent the release of contaminants, and to promptly and effectively address the migration of contaminants, including vinyl chloride, off-site and into the groundwater beneath the Class area.

44. Defendants have also breached their duty to warn members of the Class of the threatened and actual contamination of the drinking water aquifer (with vinyl chloride released from the Landfill) that serves residences within the Class area.

45. Defendants' breaches of their duties to Plaintiffs and the Class are continuing and have caused substantial injury and damage to Plaintiffs and the Class, including, but not limited to, injury in the form of damages to their property.

COUNT III

NEGLIGENCE PER SE

46. Plaintiffs, individually and on behalf of the Class defined herein, repeat, reallege and incorporate by reference paragraphs 1 through 40 of the Second Amended Complaint as paragraph 46 of this Count III, as though fully set forth herein.

47. Statutes such as CERCLA, *supra*, and the Illinois Groundwater Protection Act, 415 ILCS 5/1, *et seq.*, are designed, *inter alia*, to protect human health and property.

48. The aquifers beneath the Class area are "resource groundwater" within the meaning of the Illinois Groundwater Protection Act. Releases of contaminants, including vinyl chloride, are continuing from the Landfill to the aquifers located underneath the Class area in violation of, *inter alia*, CERCLA and the Illinois Groundwater Protection Act, 35 Ill. ADC 620.301.

49. Defendants' continuing violations of, *inter alia*, CERCLA and the Illinois Groundwater Protection Act are the proximate cause of substantial injury and damage to Plaintiffs and the Class, including, but not limited to, injury in the form of damages to their property.

COUNT IV

PRIVATE NUISANCE

50. Plaintiffs, individually and on behalf of the Class defined herein, repeat, reallege and incorporate by reference paragraphs 1 through 40 of the Second Amended Complaint as paragraph 50 of this Count IV, as though fully set forth herein.

51. Defendants continue to maintain, operate and control the Landfill, a private nuisance to members of the Class.

52. Contaminants released from the Landfill, including vinyl chloride, continue to migrate into the Class area. This contamination includes Class member exposure to vinyl chloride via groundwater, vapor, and/or soil.

53. Defendants' continuing maintenance of the Landfill so as to cause and permit further contamination of the Class area constitutes an unreasonable, unwarranted and unlawful use of the Landfill. Defendant's maintenance of this nuisance has substantially interfered with Plaintiffs' and the Class members' reasonable use and enjoyment of their properties.

54. Plaintiffs and members of the Class have incurred substantial damage as a result of Defendants' ongoing maintenance of the Landfill, a private nuisance.

COUNT V

TRESPASS

53. Plaintiffs, individually and on behalf of the Class as defined herein, repeat, reallege and incorporate by reference paragraphs 1 through 40 of the Second Amended Complaint as paragraph 53 of this Count V, as though fully set forth herein.

54. Defendants cause and permit contaminants, including vinyl chloride, to continue to enter the Class area. This entry is unlawful and without the consent of members of the Class.

55. In addition, contaminants, including vinyl chloride, that originate from the Landfill are known by Defendants to be present at, on and/or in Class members' properties. In spite of this knowledge, Defendants have failed to remove or otherwise remediate these remaining contaminants from Class members' properties.

56. Defendants' continuing wrongful acts and omissions result in: releases of contaminants from the Landfill into the environment; migration of such contaminants to the Class area; and invasion of Class area properties, without the consent of Plaintiffs or Class members.

57. The invasion of Class area properties is unreasonable and unlawful. As a result of Defendants' continuing trespasses, the lawful rights of Plaintiffs and the Class to use and enjoy their property have been substantially interfered with, and Plaintiffs and the Class have been damaged.

Relief Requested

WHEREFORE, Plaintiffs request that this Court enter judgment in their favor and in favor of the Class and against Defendants, and pray:

A. that the Court certify Plaintiffs' action as a class action on behalf of all others similarly situated, appoint Plaintiffs' counsel as counsel for the Class, and order that Notice be given to the Class of this action;

B. that the Court declare that Defendants are liable under Section 107(a) of CERCLA for the response costs incurred by Plaintiffs and the Class in connection with the release of hazardous substances, including pre-judgment interest on such costs and order that Defendants reimburse Plaintiffs and the Class for such response costs;

C. that the Court award Plaintiffs and the Class judgment for all response costs including costs for a permanent and safe domestic water supply to Plaintiffs and the Class, pre-judgment interest, and attorneys' fees incurred by Plaintiffs and the Class as of the trial of this matter;

D. that the Court award Plaintiffs and the Class compensatory, punitive and other appropriate damages in an amount to be determined by the evidence at trial;

E. that the Court award Plaintiffs and the Class punitive damages in an amount sufficient to deter Defendants and other companies and/or individuals who are similarly situated from acting in a similar manner; and

H. that the Court award Plaintiffs and the Class their costs of suit and such other and further relief as the Court deems appropriate and just.

Jury Trial Demanded

Plaintiffs request trial by jury on all issues so triable.

Dated: February 6, 2006

Respectfully submitted,

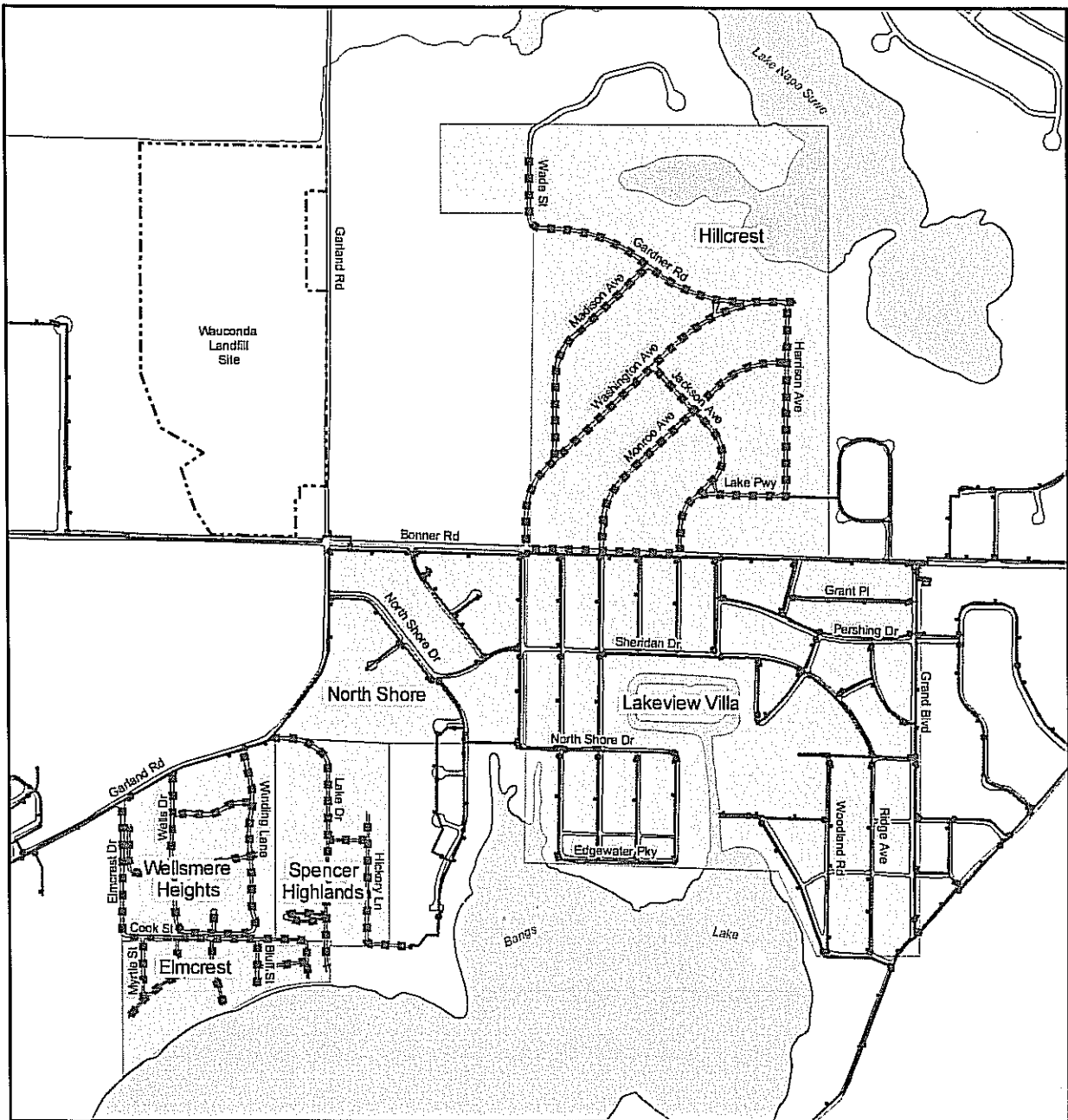
**GENE E. VOSS, GARY W. VOSS,
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CHRIS A. MOLENAUR**, individually and on
behalf of all persons similarly situated,

By: _____




One of Plaintiffs' Attorneys

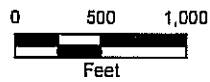
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**PLAINTIFFS'
EXHIBIT A**



LEGEND

-  Proposed Water Mains
-  Water Mains
-  Subdivisions



PROPOSED WATER MAIN LOCATIONS
Wauconda, Illinois

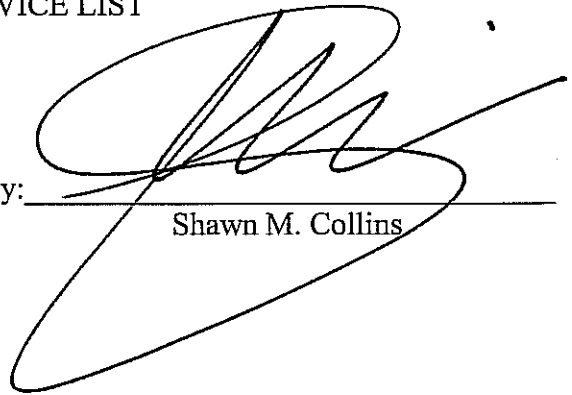
CERTIFICATE OF SERVICE

I certify that a true and correct copy of the **Plaintiffs' Second Amended Class Action Complaint** was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system on February 6, 2006:

SEE ATTACHED SERVICE LIST

By: _____

Shawn M. Collins

A large, stylized handwritten signature in black ink, written over a horizontal line. The signature is cursive and appears to read 'Shawn M. Collins'.

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