

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

M & K PROPERTIES, INC.,)	
)	
Plaintiff,)	Case No. 05-cv 680
)	
v.)	
)	
ESAU PATTERSON, AMARI PROPERTIES,)	Judge Lindberg
L.L.C. and LINDA Z. PATTERSON,)	Magistrate Ashman
)	
Defendants.)	

JOINTLY PROPOSED FINAL PRETRIAL ORDER

1. STATEMENT OF JURISDICTION

This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1331, 42 U.S.C. § 9607(a) and 42 U.S.C. § 6972(a) because this case arises under the laws of the United States. The claims in Count I are predicated upon and seek relief under the Resource Conservation and Recovery Act (“RCRA”), as amended. This Court has supplemental jurisdiction pursuant to 28 U.S.C. §1367 over the State law claims herein, all of which are so related to the claims in Count I in that they form part of the same case or controversy. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391(b), 42 U.S.C. § 9613(b), and 42 U.S.C. §6972(a) because the damages and claims arose in this judicial district and because all of the parties are residents of the Northern District of Illinois.

2. STATEMENT OF THE CLAIM(S) OF PLAINTIFF, DEFENSE OF DEFENDANT, AND ALL COUNTERCLAIMS AND CROSS CLAIMS

A. STATEMENT OF THE CLAIMS OF PLAINTIFF

M & K Properties, Inc. (“M&K”) filed this civil action seeking declaratory and

injunctive relief, as well as cost recovery, pursuant to Section 7002 of RCRA, 42 U.S.C. §6972; the Illinois common law of public nuisance, trespass, and negligence; Breach of Lease; and for fraudulent conveyance pursuant to the Illinois Fraudulent Conveyance statute, 740 ILCS 160/5, against Defendants, Esau Patterson (“Esau”), Amari Properties, L.L.C. (“Amari”) and Linda Patterson (“Linda”) (collectively referred to as “Defendants”).¹ M&K’s claims arise from the disposal and release of hazardous levels of perchloroethylene (the primary ingredient in drycleaning solvent) from a drycleaning facility formerly leased and operated by Esau, on property owned by M&K (the “Drycleaning Facility”). M&K also asserts a claim for fraudulent conveyance of certain real estate by Esau and Linda to Amari, a company owned by them, after Esau was served with notice of M&K’s intent to file this action.²

The perchloroethylene has contaminated the Drycleaning Facility property and has also migrated or has the potential to migrate through soil and groundwater from the Drycleaning Facility property onto adjacent property, also owned by M&K, causing damage to the Drycleaning Facility property and adjacent property. The Drycleaning Facility and the adjacent property are located at 18741-18743 Dixie Highway, Homewood, Cook County, Illinois (which is a small “strip” shopping center).

M&K seeks to recover all costs and funds expended and to be expended by M&K for investigation and remediation of any releases or threatened releases of hazardous substances into the environment at or from the Drycleaning Facility. In addition, M&K further seeks injunctive relief requiring Esau to investigate and remediate any releases or threatened releases of hazardous substances into the environment at or from the

¹ During the final pretrial conference on August 2, 2006, Plaintiff voluntarily withdrew its claim pursuant to the Illinois Public Nuisance Act, 720 ILCS 5/47-5.

² Defendants moved for a finding on this claim at the close of M&K’s case in chief. M&K did not oppose the Motion, and it was granted.

Drycleaning Facility. Further, M&K seeks the imposition of civil penalties against Esau pursuant to 42 U.S.C. 6972; an order requiring Esau to file a bond or equivalent security, pursuant to 42 U.S.C. 6972(e); recovery of costs of litigation, including reasonable attorney and expert witness fees, pursuant to 42 U.S.C. 6972(e). Finally, M&K seeks a declaration that 1838 E. Reitveld Drive, Crete, Illinois was fraudulently conveyed to Amari with intent to deceive and defraud M&K or to defeat, hinder or delay potential debts, damages or demands of M&K against Esau for costs and damages of remediation of the contamination at the M&K property.

B. STATEMENT OF DEFENSE OF DEFENDANTS

Defendants assert that they are not liable to M&K on any theory because Defendants did not handle, treat, store or dispose of any solid or hazardous waste, or cause or allow any release of dry cleaning solvents, including perchloroethylene, at the subject property.

3. AGREED STATEMENT OF THE CONTESTED ISSUES OF FACT AND LAW AND A STATEMENT OR STATEMENTS OF CONTESTED ISSUES OF FACT OR LAW NOT AGREED TO

A. AGREED STATEMENT OF CONTESTED ISSUES OF FACT AND LAW

M&K and Defendants set forth the following statements of contested issues of fact and law:

1. Whether the perchloroethylene has contaminated the Drycleaning Facility property and has also migrated or has the potential to migrate through soil and groundwater from the Drycleaning Facility property onto adjacent property, also owned by M&K, causing damage to both properties and the loss of the use and enjoyment of that property. (Plaintiff's Complaint, Allegations Common to All Counts, ¶1).

2. Whether Esau fraudulently conveyed his house to Amari in order to deceive and defraud M&K, or to defeat, hinder or delay potential debts, damages or demands of M&K against Esau for costs and damages of remediation resulting from the perchloroethylene contamination. (Plaintiff's Complaint, Allegations Common to All Counts, ¶2).

3. Whether Esau is required to investigate and remediate any releases or threatened releases of hazardous substances into the environment at or from the Drycleaning Facility. (Plaintiff's Complaint, Allegations Common to All Counts, ¶4).

4. Perchloroethylene (also known as PERC, PCE, perchloroethene, tetrachloroethylene or tetrachloroethene) is a volatile organic compound and is a dangerous substance, which has been linked to a variety of human illnesses, including cancer, and is severely destructive to the environment, including vegetation and wildlife. (Plaintiff's Complaint, Allegations Common to All Counts, ¶17).

5. During the operation of the Drycleaning Facility, Esau operated storage areas which were used to store barrels, drums or other containers of spent perchloroethylene, before such materials were removed from the Drycleaning Facility. (Plaintiff's Complaint, Allegations Common to All Counts, ¶19).

6. At one or more times during the operation of the Drycleaning Facility, Esau caused or allowed dry cleaning solvents, including perchloroethylene, to be released and to enter surrounding soils, groundwater and physical structures at and beneath the Drycleaning Facility. (Plaintiff's Complaint, Allegations Common to All Counts, ¶20).

7. As a result of such releases, the Drycleaning Facility soils and groundwater have been contaminated by, or are threatened to be contaminated by,

perchloroethylene and its products of degradation, including trichloroethylene, 1,2-cis dichloroethylene and vinyl chloride. (Plaintiff's Complaint, Allegations Common to All Counts, ¶21).

8. Over time, dry cleaning solvents, including perchloroethylene and its products of degradation, including trichloroethylene, 1,2-cis dichloroethylene and vinyl chloride, which were released by Esau at the Drycleaning Facility, have contaminated or threaten to contaminate soils and groundwater on the M&K Property. (Plaintiff's Complaint, Allegations Common to All Counts, ¶22).

9. Esau has contributed or is continuing to contribute to the past handling, storage or disposal at the Drycleaning Facility of perchloroethylene or spent perchloroethylene, which substances are "solid waste" or "hazardous waste," or both, within the meaning of RCRA. (Plaintiff's Complaint, Allegations Common to All Counts, ¶23).

10. The M&K Property is substantially and significantly contaminated with the hazardous chemical, perchloroethylene and by-products of perchloroethylene, which have migrated or have the potential to migrate, and continue to migrate from the Drycleaning Facility, and may present an imminent and substantial endangerment to health or environment, within the meaning of RCRA Section 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B). (Plaintiff's Complaint, Allegations Common to All Counts, ¶24).

11. M&K first learned of the contamination of the soils and groundwater under the Drycleaning Facility in August 2004, following an investigation of the Drycleaning Facility by an environmental consultant working for M&K. (Plaintiff's Complaint, Allegations Common to All Counts, ¶25).

12. In its currently contaminated condition, the M&K Property has substantially less fair market value than it would have in an uncontaminated state. Potential buyers of the property, and the lenders to such potential buyers, recognize that any alterations to the use or occupancy of the property, which would entail excavation of subsurface soils, will be more expensive because of the contaminated condition of those soils. (Plaintiff's Complaint, Allegations Common to All Counts, ¶26).

13. During the period necessary to repair the M&K Property, that is, during the period necessary to restore the property to that economic value which it held before disclosure of its contaminated state, the M&K Property will be physically removed from M & K's use and enjoyment, at least in part. Because the soils and groundwater on the M&K Property are so extensively contaminated, measures to detect and remove that contamination will require excavation of the property and/or the installation of contaminant extraction and treatment equipment, thereby further depriving M&K of the use and enjoyment of their property. (Plaintiff's Complaint, Allegations Common to All Counts, ¶27).

14. Since approximately 1994, and through April 2004, Patterson contributed to the handling, treatment, storage or disposal at the Drycleaning Facility of "solid wastes" within the meaning of RCRA §1004(27), 42 U.S.C. § 6903(27) (hereafter referred to collectively as the "management" of solid waste). (Plaintiff's Complaint, Count I, ¶30).

15. The aforesaid management activities have caused the release of solid wastes to soils, subsoils, groundwater and physical structures at the M&K Property, which release presents an imminent and substantial endangerment to health or the

environment, within the meaning of §7002(a)(1)(B) of RCRA, 42 U.S.C. §6972(a)(1)(B). (Plaintiff's Complaint, Count I, ¶31).

16. Esau is subject to suit pursuant to RCRA §7002(a)(1)(B), 42 U.S.C. §6972(a)(1)(B). (Plaintiff's Complaint, Count I, ¶32).

17. This Court has jurisdiction pursuant to RCRA §7002(a), 42 U.S.C. §6972(a), to order Esau to take any actions necessary to abate the conditions which present an imminent and substantial endangerment to health or the environment and to refrain from taking actions in violation of RCRA and the regulations promulgated pursuant thereto, and to impose appropriate civil penalties. (Plaintiff's Complaint, Count I, ¶33).

18. Esau has allowed and continues to allow hazardous substances to remain in soils, subsoils, and groundwater at the M&K Property. (Plaintiff's Complaint, Count II, ¶29).

19. Such hazardous substances have migrated, or have the potential to migrate, onto adjacent property, including the M&K Property, causing the M&K Property to be unsuitable for various uses, including commercial uses. (Plaintiff's Complaint, Count II, ¶30).

20. The existence of such hazardous substances in soils, subsoils, and groundwater at the M&K Property is offensive and dangerous to the health of individuals and the public. (Plaintiff's Complaint, Count II, ¶31).

21. The contamination of soils and groundwater at, in, on or beneath the M&K Property, has occurred and persists because of Esau's acts and omissions including, but not limited to, the operation and maintenance of the Drycleaning Facility; the handling, storage, use and disposal of hazardous substances; and/or failure to promptly

and effectively address such contamination to prevent further migration of such contamination. (Plaintiff's Complaint, Count III, ¶29).

22. Such hazardous substances have migrated, or have the potential to migrate, onto adjacent property, including the M&K Property, causing the M&K Property to be unsuitable for various uses, including commercial uses. (Plaintiff's Complaint, Count III, ¶30).

23. The existence of such hazardous substances in soils, subsoils, and/or groundwater at the M&K Property injures the safety and health of the general public and causes a public injury. (Plaintiff's Complaint, Count III, ¶31).

24. Esau knew or should have known that his failure to remediate the contamination at and from the Drycleaning Facility in a timely manner would result in the entry of those contaminants onto adjacent property, including the M&K Property. (Plaintiff's Complaint, Count IV, ¶28).

25. Esau's acts and omissions have resulted in releases of contaminants from the Drycleaning Facility into the environment, and the migration, and potential for migration, of such contaminants at, in, on or beneath M&K Property, without the consent of M & K. (Plaintiff's Complaint, Count IV, ¶29).

26. As a result of Esau's acts and omissions, the lawful rights of M & K to use and enjoy its property have been substantially and unreasonably interfered with, and M & K has been damaged. (Plaintiff's Complaint, Count IV, ¶30).

27. During the operation of the Drycleaning Facility, Esau:

- A. Failed to adopt reasonably available procedures for storage, handling and disposal of hazardous chemicals, including perchloroethylene; failed to utilize or contract for reasonably

available procedures to determine whether releases of hazardous chemicals, including perchloroethylene had occurred or were occurring; and

- B. Failed to take reasonably necessary and timely action to remediate perchloroethylene which had been released into the environment from the Drycleaning Facility, so as to prevent the further spread of such contaminants to the M&K Property.

(Plaintiff's Complaint, Count V, ¶28).

28. From the time Esau knew, or reasonably should have known, that contamination from the Drycleaning Facility had entered upon, or was about to enter upon, the M&K Property, Esau:

- A. Failed to remove the contamination from the M&K Property;
- B. Failed to take necessary and timely action to remove the contamination from the M&K Property;
- C. Failed to take necessary and timely action to identify the sources and concentrations of contamination upon the M&K Property, to enable Esau to prevent the further migration of contamination to the M&K Property.
- D. Failed to take necessary and timely action to remove contamination from the M&K Property, to prevent further migration of contamination to the M&K Property; and
- E. Failed to implement contamination identification and contaminant removal plans.

(Plaintiff's Complaint, Count V, ¶29).

29. As a direct and proximate result of one or more of Esau's acts or omissions, hazardous substances, including perchloroethylene were released from the Drycleaning Facility, and has migrated, or threatens to migrate, to and enter upon the M&K Property, thereby damaging said property. (Plaintiff's Complaint, Count V, ¶30).

30. Esau has caused or allowed the discharge of contaminants, including dry cleaning solvents such as perchloroethylene, into the soils and groundwater at and beneath the Drycleaning Facility. The discharge has migrated or has the potential to migrate to waters of the State of Illinois, specifically ground water, at the M&K Property, so as to cause water pollution that is likely to create a nuisance or render underground water harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial or other legitimate uses. (Plaintiff's Complaint, Count VI, ¶32).

31. Esau is in violation of Illinois Pollution Control Board regulations 620.115, 35 Ill. Admin. Code 620.115, which prohibits a violation of the Act, the IGPA or regulations adopted by the Board thereunder, and 620.301, 35 Ill. Admin. Code 620.301, which prohibits use impairment of resource groundwater. (Plaintiff's Complaint, Count VI, ¶34).

32. Groundwater beneath the M&K Property is classified as either Class I (Potable Resource Water) or Class II (General Resource Water) as defined under Illinois Pollution Control Board regulations 620.210 and 220, 35 Ill. Admin. Code 620.210 and 620.220. (Plaintiff's Complaint, Count VI, ¶35).

33. Esau has caused, threatened or allowed the release of contaminants, including perchloroethylene and by-products of perchloroethylene, into soil and

groundwater at and beneath the M&K Property, such that treatment is necessary to assure the existing use or potential use of the groundwater as a potable source. (Plaintiff's Complaint, Count VI, ¶36).

34. Esau has deposited contaminants, including dry cleaning solvents such as perchloroethylene and by-products of perchloroethylene, at and beneath the Drycleaning Facility, such as to cause migration of contaminants from soils to groundwater at and beneath the M&K Property. Deposited contaminants have migrated so as to cause a water pollution hazard that is likely to create a nuisance or render underground water harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial or other legitimate uses. (Plaintiff's Complaint, Count VI, ¶38).

35. Esau has disposed of waste, including perchloroethylene and by-products of perchloroethylene, by discharging said waste onto the land of the Drycleaning Facility, such that said waste has entered the environment through soil and groundwater at and beneath the Drycleaning Facility. (Plaintiff's Complaint, Count VI, ¶40).

36. As direct and proximate result of Esau's acts and omissions in violation of cited statutes, the M&K Property has been damaged, for which damage Esau is liable. (Plaintiff's Complaint, Count VI, ¶41).

37. During the term of the Lease, Esau caused or allowed the "disposal" and "release" of waste, contaminants, and drycleaning solvents within the meaning of 415 ILCS 5/3.185, 5/3.395, 5/3.535, 5/3.165 and 415 ILCS 135/5(h), into subsurface soils and groundwater under the leased premises of the Drycleaning Facility and threatened contamination migration of said wastes onto the M&K Property. (Plaintiff's Complaint, Count VII, ¶30).

38. By causing and allowing the disposal and release of waste, contaminants, and drycleaning solvents, which contained hazardous substances, into the soils and groundwater under the M&K Property, Esau violated Federal and State laws, as more fully set forth in Counts I, II and VI of this Complaint. (Plaintiff's Complaint, Count VII, ¶31).

39. As a direct and proximate result of Esau's breaches of the Lease as aforesaid, M & K has incurred, and will incur, damages, including, but not limited to, costs for investigation, cleanup and remediation, and through diminution in value of the M&K Property. (Plaintiff's Complaint, Count VII, ¶32).

40. M & K's damages arise out of Esau's failure to comply with and perform the requirements of Paragraphs 4 and 6 of the Lease and out of Patterson's occupancy of the Drycleaning Facility. (Plaintiff's Complaint, Count VII, ¶33).

41. M & K has performed all conditions required of it under the Lease. (Plaintiff's Complaint, Count VII, ¶34).

42. M&K is informed and believes that Esau and Linda conveyed the Crete Property to Amari with intent to defraud M & K, or to defeat, hinder or delay potential debts, damages or demands of M & K, in violation of 720 ILCS 5/17-14. (Plaintiff's Complaint, Count VIII, ¶30).

43. Whether any contamination on the subject property was caused by operations of a prior drycleaning operation on the Drycleaning Facility property, before Esau commenced operations on June 1, 1994.

4. **ITEMIZATION OF DAMAGES**

M&K provides the following itemization of requested relief:

1. A preliminary and permanent injunction restraining and enjoining Esau from continuing to permit the presence of solid waste contamination at, in, on, beneath or adjacent to the M&K property which presents an imminent and substantial endangerment to health or the environment pursuant to 42 U.S.C. 6972.
2. An order requiring Esau to immediately remedy such contamination pursuant to 42 U.S.C. 6972 by the performance of an environmental investigation (Phase II investigation) to determine the full extent of contamination of the subject property and subsequent remediation of all contamination located at, in, on, beneath or adjacent to the M&K property. Performance of the Phase II investigation and subsequent remediation of the subject property must be completed in accordance with State and Federal law and regulations.
3. For a declaration, pursuant to 42 U.S.C. 6972, that Esau is liable to M&K for all sums M&K might incur in the future relating to investigation and remediation of the M&K property.
4. The imposition of civil penalties against Esau pursuant to 42 U.S.C. 6972.
5. An order requiring Esau to file a bond or equivalent security, pursuant to 42 U.S.C. 6972(e).
6. Recovery of costs of litigation, including reasonable attorney and expert witness fees, pursuant to 42 U.S.C. 6972(e).
7. For a declaration that 1838 E. Reitveld Drive, Crete, Illinois was fraudulently conveyed to Amari with intent to deceive and defraud M&K or to defeat, hinder or delay potential debts, damages or demands of M&K against Esau for costs and damages of remediation of hazardous substances in soils, subsoils and groundwater at the M&K property.
8. For all other relief the Court deems appropriate under the circumstances.

This Section is not applicable to Defendants.

**5. LIST OF NAMES AND ADDRESSES OF ALL WITNESSES:
(A) WHO WILL BE CALLED; (B) WHO MAY BE CALLED;
AND (C) WHOSE DEPOSITION WILL BE USED**

The following is a list of the names and addresses of all witnesses of M&K and

Defendants:

A) WITNESSES WHO WILL BE CALLED BY M&K

Michael McConnell
33 Lake Katherine Way
Palos Heights, IL 60463
(708) 361-4590

Jim Kisiel
PO Box 868
Orland Park, IL 60462
(708) 361-4590

Christopher J. Lee
Northern Environmental Technologies, Inc.
647 Academy Drive
Northbrook, IL 60062
(847) 562-8577

Esau Patterson
1838 E. Rietveld Drive
Crete, Illinois 60417

B) WITNESSES WHO MAY BE CALLED BY M&K

Bob C. Soni
Northern Environmental Technologies, Inc.
647 Academy Drive
Northbrook, IL 60062
(847) 562-8577

Mr. Joseph F. Whittle, Jr., P.E., Branch Manager
Professional Services Industries, Inc.
4421 W. Harrison
Hillside, IL 60162
(708) 236-0720
Current address: 18 Music Fair Rd., Owings Mills, MD
21117-3603, (410) 363-1555 x239

Mr. Jerrold A. Trezzo, CPG
The Environmental Solutions Group, Inc.
8315 Virginia Street, Suite E
Merrillville, IN 46410
Current address: 110 E. Burwell Dr., Porter, IN 46304-1284,
(219) 926-6897

Anthony DeMauro
Northern Environmental Technologies, Inc.
647 Academy Drive
Northbrook, IL 60062
(847) 562-8577
Current address: 1000 S. Lorraine Ave. #105, Wheaton, IL
60187

Lucien Angelo
Lucky Locators, Inc.
P.O. Box 28
Algonquin, IL 60102
(847) 458-1530

Dave Garber
Drilling Unlimited, Inc.
1128 Towne Ave.
Batavia, IL 60510
(630) 879-9879

John Hawkins, ESC Representative
Environmental Science, Inc.
12065 Lebanon Rd.
Mt. Juliet, TN 37122

Patricia Blazer (Office Manager at Jeep & Blazer, LLC)
24 N. Hillside Avenue, Suite A
Hillside, Illinois 60162
(In the event Defendants continue to deny that the subject
RCRA notices of intent to sue were served on the appropriate
State and Federal Officials).

C) WITNESSES WHO WILL BE CALLED BY DEFENDANTS

Esau Patterson
1838 E. Rietveld Drive
Crete, Illinois 60417

Linda Patterson
1838 E. Rietveld Drive
Crete, Illinois 60417

**6. A LIST OF NAMES AND ADDRESSES OF ALL EXPERT
WITNESSES WHO WILL BE CALLED**

The following is a list of M&K's expert witnesses who will be called at trial:

Christopher J. Lee
 Northern Environmental Technologies, Inc.
 647 Academy Drive
 Northbrook, IL 60062
 (847) 562-8577

Defendants will call no experts.

**7. A SCHEDULE OF ALL EXHIBITS A PARTY MAY INTRODUCE AT TRIAL,
IDENTIFIED BY NUMBER TO BE USED AT TRIAL**

The following is a schedule of all exhibits M&K may introduce at trial, identified by number to be used at trial:

EXHIBIT NO.	DESCRIPTION
1	<u>5/01/1994</u> Store Lease between M&K and Patterson (E. Patterson Deposition Exhibit No.: 11)
2	<u>May 22, 1997</u> Plat of Survey of 18741 S. Dixie Highway
4	<u>June 26, 1997</u> Special Warranty Deed for property located at 18741-18743 Dixie Highway, Homewood, Illinois
10	<u>May 12, 2004</u> Letter from Family Pride Cleaners to M&K. (E. Patterson Deposition Exhibit No.: 6)
11	<u>July 9, 2004</u> Letter from Jeff Diver to Esau Patterson.
12	<u>July 25, 2004</u> Letter from Esau Patterson to Jeff Diver. (E. Patterson Deposition Exhibit No.: 6)
13	<u>September 9, 2004</u> Notice of Intent To Sue (E. Patterson Deposition Exhibit No.: 10)
14	<u>September 9, 2004</u> Notice of Intent to Sue Issued to Federal and State Agencies (with certified mail green cards).
15	<u>December 6, 2004</u> Recorded Warranty Deed for 1838 E. Rietveld Drive (E. Patterson Deposition Exhibit No.: 9)
16	<u>November 5, 2004</u> Amari Articles of Organization (E. Patterson Deposition Exhibit No.: 4)
17	<u>2004</u> Amari Operating Agreement (E. Patterson Deposition Exhibit No.: 5)

20	<u>Dry Cleaner Manual</u> (2010 Hoffman Dry Cleaner) (First three pages) (E. Patterson Deposition Exhibit No.: 8)
21	<u>Various Invoices</u> depicting purchases of drycleaning supplies, chemical disposal and repairs to the drycleaning equipment (E. Patterson Deposition Exhibit No.: 18)
22	<u>Various Cancelled checks</u> showing purchase of drycleaning supplies, chemical disposal and repairs to the drycleaning equipment (E. Patterson Deposition Exhibit No.: 19)
23	<u>December 6, 2005</u> Esau Patterson Site Layout (E. Patterson Deposition Exhibit No.: 12)
24	<u>May 12, 2006</u> Linda Patterson Site Layout (L. Patterson Deposition Exhibit No.: 23)
26	<u>May 23, 1997</u> Photos from Phase I Environmental Site Assessment by Professional Services Industries, Inc. (E. Patterson Deposition Exhibit No.: 13)
27	<u>June 24, 1997</u> Photos from Environmental Site Assessment and Inspection by Environmental Solutions Group, Inc. (E. Patterson Deposition Exhibit No.: 14)
28	<u>June 24, 1997</u> Color Photos from Phase I Environmental Site Assessment by Environmental Solutions Group, Inc. (E. Patterson Deposition Exhibit No.: 15)
31	<u>August 30, 2004</u> Laboratory Analysis by Environmental Science Corp.
32	<u>August 19, 2004</u> Field Notes by Northern Environmental.
33	<u>August 20, 2004</u> Chain of Custody Report – Northern Environmental.
34	<u>September 22, 2004</u> Invoice from Northern Environmental Technologies, Inc. for August 2004 soil sample services
35	<u>June 28, 2005</u> Proposed Phase II Focused Site Investigation by Northern Environmental Technologies, Inc.

Defendants have no objection to M&K's Exhibits Numbers One through Twenty-Four (1-24). Defendants object to M&K's Exhibits Numbers Twenty-Six through Thirty-Five (26-35) on grounds of lack of foundation and hearsay. Defendants will introduce

no exhibits in their case-in-chief, but may introduce certain exhibits for the purpose of impeaching M&K's witnesses. At this time, Defendants are not aware of which documents they will introduce for impeachment purposes.

8. EXPECTED LENGTH OF TRIAL

The parties expect the trial to last approximately two days.

9. INDICATE WHETHER JURY OR BENCH TRIAL

Bench trial.

10. A STATEMENT SUMMARIZING THE CURRENT STATUS OF SETTLEMENT NEGOTIATIONS

The parties have engaged in settlement negotiations but are too far apart for this case to have any real prospect of settling before trial.

ENTER:

Judge

Dated:_____

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused a copy of the above JOINTLY PROPOSED FINAL PRETRIAL ORDER to be electronically filed with the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, on this 7th day of August, 2006, using the CM/ECF system which will send notification of such filing to the following:

Attorneys	Parties Represented
William J. Anaya John L. Ropiequet John Grady Daniel I. Schlade Arnstein & Lehr LLP 120 South Riverside Plaza Suite 1200 Chicago, Illinois 60606-3910	ESAU PATTERSON, AMARI PROPERTIES, L.L.C. and LINDA Z. PATTERSON

s/ Kent E. Mohr, Jr.
Kent E. Mohr, Jr. (ARDC No. 6281997)
Attorney for M&K Properties, Inc.
Jeep & Blazer, L.L.C.
24 N. Hillside Avenue, Suite A
Hillside, Illinois 60162-1565
Office: (708) 236-0830
Fax: (708) 236-0828
kemohr@enviroatty.com