

**IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI**

JOHN C. KITCHIN, JR., et al.,)	
<i>on behalf of themselves and all others</i>)	
<i>similarly situated,</i>)	
)	
Plaintiffs,)	
)	
vs.)	Case No. 18SL-CC00613
)	
BRIDGETON LANDFILL, LLC; et al.,)	
)	
Defendants.)	

NOTICE TO STATE COURT OF FILING NOTICE OF REMOVAL

TO: Joan M. Gilmer
Clerk of the 21st Judicial Circuit Court, St. Louis County, State of Missouri

PLEASE TAKE NOTICE that Defendant Bridgeton Landfill, LLC (on its own behalf and as the merger successor of West Lake Landfill, Inc. and the merger successor of Rock Road Industries, Inc.), with the consent of Republic Services, Inc. and Allied Services, LLC, by and through counsel, has filed a Notice of Removal of this cause from the St. Louis County Circuit Court, Case No. 18SL-CC00613 where it is now pending, to the United States District Court for the Eastern District of Missouri, Eastern Division, Case No. 4:18-cv-672. *See* Notice of Removal attached hereto.

Dated: April 27, 2018

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above pleading was served via the U.S. District Court ECM/ECF system and via First Class Mail, postage prepaid, on the following counsel of record, this 27th day of April, 2018:

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**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

JOHN C. KITCHIN, JR. and)
NORTH WEST AUTO BODY COMPANY,)
on behalf of themselves and all others)
similarly situated,)

Plaintiffs,)

Case No. _____

vs.)

BRIDGETON LANDFILL, LLC; REPUBLIC)
SERVICES, INC.; and ALLIED SERVICES,)
LLC;)

Defendants.)

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1331, 1332, 1441, 1446, and 1453, Defendant Bridgeton Landfill, LLC (on its own behalf and as the merger successor of West Lake Landfill, Inc.¹ and the merger successor of Rock Road Industries, Inc. (“Rock Road”)²) (“Bridgeton”), on its own behalf and with the consent of the other named defendants Republic Services, Inc. (“Republic”) and Allied Services, LLC (“Allied”) (collectively, “Defendants”), hereby removes the above-styled action to this Court from the Circuit Court of St. Louis County, Missouri. This Court’s jurisdiction arises under both federal question and diversity jurisdiction. In support of this removal, Defendant states as follows:

¹ West Lake Landfill, Inc. underwent a name change in 1988 and a subsequent merger in 1997, resulting in its merger into Bridgeton Landfill, LLC. Defendants are not raising as an issue the naming of “West Lake Landfill, Inc.” by Plaintiffs at this time, but are not waiving any defenses on this issue and expressly reserve the right to raise any such defenses in future pleadings. Any reference to the “West Lake Landfill” in this removal denotes the physical site of the West Lake Landfill and is not a reference to the entity once known as West Lake Landfill, Inc.

² As of April 9, 2018, Rock Road Industries, Inc. formally merged into Bridgeton Landfill, LLC, a Delaware Limited Liability Company.

INTRODUCTION

1. On February 20, 2018, Plaintiffs instituted in the Circuit Court of St. Louis County, Missouri, the instant action styled, *John C. Kitchin, Jr., et al. v. Bridgeton Landfill, LLC., et al.*, Case No. 18SL-CC00613 (the “Lawsuit”).
2. On April 2, 2018, Plaintiffs filed a First Amended Class Action Petition (“the Complaint”).
3. A copy of the Complaint together with the complete file of the action filed in St. Louis County, Case No. 18SL-CC00613, is attached hereto as **Exhibit 1**. Defendant is unaware of the existence of any process, pleadings, or orders other than the documents included in the exhibits attached hereto. There are no motions or hearings pending before the Circuit Court of St. Louis County, Missouri in this matter.
4. Plaintiffs and putative class members are owners of real property in St. Louis County, Missouri and current or former residents of Bridgeton, Missouri. *See* Compl. ¶¶ 9-11, 22, 23, 34, 35.
5. Plaintiffs allege that, over the span of several decades, radioactive materials were released into the environment in and around the Bridgeton and West Lake Landfills in Bridgeton, Missouri (“the Landfills”), contaminating Plaintiffs’ properties with radioactive materials and causing property damage. *Id.* ¶¶ 61-115
6. Plaintiffs allege Defendants are responsible for radioactive contamination of Plaintiffs’ properties, stemming from their operation and maintenance of the Landfills. *Id.* ¶¶ 1, 6, 7, 27-30, 115
7. Plaintiffs seek to bring claims on behalf of purported classes of property owners and residents within an 11-square mile area in the vicinity of the Landfills. *Id.* ¶¶ 34, 35.

8. Plaintiffs allege “Defendants recklessly dumped radioactive waste” at the Landfills and contaminated the land of all putative class members. *Id.* ¶ 40.

9. The nine-count Complaint asserts causes of action for trespass, permanent nuisance, temporary nuisance, negligence, negligence per se, strict liability, civil conspiracy, and also claims for injunctive relief and punitive damages.

10. Plaintiffs claim they are entitled, as a result of Defendants’ alleged conduct to compensation for loss and use of enjoyment of property; annoyance and discomfort; damage to personal property; diminution in the market value of property; as well as costs and expenses supposedly incurred as a result of exposure to radioactive emissions, including costs of remediation and relocation. *Id.* at 44-45.

11. Plaintiffs also seek double damages for malicious trespass under R.S.Mo. § 537.330 and punitive damages. *Id.* at 45.

12. Plaintiffs also seek injunctive relief in the form of removal of waste from Plaintiffs’ properties, and removal of radioactive waste from the Landfill, and also medical monitoring. *Id.* at 45; **Exhibit 4** Transcript at 10:14-:25; 35:6-36:5.

NOTICE OF REMOVAL IS TIMELY

13. Plaintiffs filed their original pleading on February 20, 2018 and their amended Complaint on April 2, 2018.

14. Bridgeton and Allied were served with a copy of the original pleading on March 29, 2018.

15. Republic was served on March 28, 2018.

16. This Notice of Removal is timely because it is filed within thirty (30) days of Bridgeton’s receipt of service of the original pleading and within one year of the Lawsuit being commenced.

17. No previous request has been made for the relief requested in this Notice.

18. All Defendants join in this Notice of Removal. *See* Consents of Republic Services, Inc. and Allied Services, LLC at **Exhibits 2, 3**.

FEDERAL QUESTION JURISDICTION EXISTS

19. Pursuant to 28 U.S.C. § 1331, this Court has subject-matter jurisdiction over this action because it “arises under” federal law, specifically, the Price-Anderson Act (“PAA” or “the Act”), 42 U.S.C. § 2011 *et seq.*, which completely preempts Plaintiffs’ state-law causes of action, and also the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601, *et seq.*

20. Under the artful pleading doctrine, a federal court has jurisdiction if a plaintiff has carefully drafted the complaint to avoid naming a federal statute as a basis for the claim but where the claim is, in fact, based on a federal statute. *See Franchise Tax Bd. v. Constr. Laborers*, 463 U.S. 1, 22 (1983) (“A plaintiff may not avoid federal jurisdiction by omitting from the complaint federal law essential to his or her claim or by casting in state terms a claim that can be made only under federal law.”).

21. The artful pleading doctrine requires courts to “delve beyond the face of the state court complaint and find federal question jurisdiction” by “recharacteriz[ing] a plaintiff’s state-law claim as a federal claim.” *Precision Pay Phones v. Qwest Comms. Corp.*, 210 F. Supp. 2d 1106, 1112-13 (N.D. Cal. 2002) (citing *Hunter v. United Van Lines*, 746 F.2d 635, 640 (9th Cir. 1985)); *see also State ex rel. Nixon v. Coeur D’Alene Tribe*, 164 F.3d 1102, 1109 n. 4 (8th Cir. 1999) (under the artful pleading doctrine, federal courts have subject matter jurisdiction over purported state law claims if a plaintiff failed to plead a federal right or immunity that is an essential element of cause of action); *Missouri v. Webb*, No. 4:11CV1237, 2012 WL 1033414, at *3 (E.D. Mo. Mar. 27, 2012) (“[u]nder the ‘artful pleading’ doctrine...a plaintiff may not

defeat removal by failing to plead federal questions that are essential elements of the plaintiff's claim," and "[o]nce an area of state law has been completely pre-empted by the operation of a federal statute, any claim purportedly based on that pre-empted state law is considered, from its inception, a federal claim, and therefore arises under federal law").

I. The PAA Provides an Exclusive, Retroactive Federal Cause of Action that Completely Preempts Plaintiffs' State-Law Claims

A. Plaintiffs Allege Injury Constituting a "Nuclear Incident" and, Therefore, Their Claims are Governed by the Price-Anderson Act

22. The allegations in Plaintiffs' Complaint arise from a "nuclear incident" as defined by the PAA.

23. Under the Act, federal courts have exclusive jurisdiction over "public liability actions." 42 U.S.C. § 2210(n)(2). A "public liability action...means any suit asserting public liability." 42 U.S.C. § 2014(hh). "Public liability," in turn, "means any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation[.]" 42 U.S.C. § 2014(w). A "nuclear incident...means any occurrence...within the United States causing...bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material...." 42 U.S.C. § 2014(q).

24. "To summarize, a 'public liability action' is a suit in which a party asserts that another party bears any legal liability arising out of an incident in which the hazardous properties of radioactive material caused bodily injury, sickness, or property damage." *McClurg v. MI Holdings, Inc.*, 933 F. Supp. 2d 1179, 1186 (E.D. Mo. 2013) (citing *Cotroneo v. Shaw Env't & Infrastructure, Inc.*, 639 F.3d 186, 194 (5th Cir. 2011)).

25. This case arises from an alleged nuclear incident because it is premised on allegations that radioactive waste caused bodily injury and sickness to Plaintiffs and the putative class members and damage to Plaintiffs' and the putative class members' properties.

26. Plaintiffs allege their property is "contaminated with radioactive wastes from the Landfill" Compl. ¶ 9-11. They allege each of the class members suffered similar damage "due to the contamination of their property by radioactive waste from the West Lake Landfill." *Id.* ¶ 44.

27. Plaintiffs dedicate at least thirty paragraphs alleging the history of radioactive waste at the Landfill. *Id.* ¶¶ 51-81 (titled "Radioactive Wastes," "Radioactive Waste in the St. Louis Area," "The Landfill," and "Radioactive Waste at the West Lake Landfill").

28. Plaintiffs also detail how they believe their properties, and the properties of putative class members, are damaged by radioactivity from the Landfill. *Id.* ¶¶ 24, 44, 92-104 (titled "The Spread of Defendants' Radioactive Waste to Off-Site Businesses and Homes"), 106-115 (titled "Defendants' Radioactive Particles Contaminated the Plaintiffs' Property").

29. Indeed, every count in the Complaint stems from allegations regarding injury purportedly caused by radioactive waste at the Superfund Site. *Id.* ¶¶ 120-125 (Count I); 133-37 (Count II); 146-48 (Count III); 159-161, 163-64 (Count IV); 173, 174 (Count V); 178-183 (Count VI) 185, 187 (Count VII); 193 (Count VIII); 196 (Count IX).

30. The words "radioactive" and "hazardous" are used, respectively, approximately 172 and 36 times in the Complaint.

31. Plaintiffs allege Defendants have not properly handled the waste or remediated issues arising from the waste. *Id.* ¶¶ 99-104. Further, Plaintiffs speculate as to issues or impacts which may occur in the future with the waste at the Site. *Id.* ¶¶ 96, 110. For example, Plaintiffs

allege concern if the radioactive waste were ever reached by a subsurface exothermic chemical reaction at the Bridgeton Landfill. *Id.* ¶¶ 85, 86, 89.

32. Plaintiffs allege the radioactive waste has caused them property damage, loss of use and enjoyment of their property, and prospective bodily injury and seek medical monitoring. *Id.* at ¶¶ 128, 141, 152, 164, 174, 180, 189, pp. 44-45.

33. In short, the factual allegations underlying Plaintiffs' purported injuries of property damage, lost property use, and prospective bodily injury all relate to the Defendants' conduct in connection with nuclear and radioactive materials. As a result, Plaintiffs' claims arise out of an alleged nuclear incident and, pursuant to the PAA, a public liability action is the "exclusive federal cause of action" for Plaintiffs' alleged "radiation injur[ies]." *See Roberts v. Florida Power & Light Co.*, 146 F.3d 1305, 1306 (11th Cir. 1998). Given Plaintiffs' injuries arise from an alleged nuclear incident, liability in this matter is governed by the PAA.

B. Plaintiffs' State Law Claims are Preempted

34. Because they effectively allege a "nuclear incident" under the Act, Plaintiffs' state law claims are completely preempted. Pursuant to the complete preemption doctrine, while a defendant may not generally remove a case to federal court unless the plaintiff's complaint cites federal law, the Supreme Court has recognized that a "state claim may be removed" if "a federal statute wholly displaces the state-law cause of action through complete pre-emption." *Beneficial Nat'l. Bank v. Anderson*, 539 U.S. 1, 8 (2003). "This is so because '[w]hen the federal statute completely pre-empts the state-law cause of action, a claim which comes within the scope of that cause of action, even if pleaded in terms of state law, is in reality based on federal law.'" *Aetna Health Inc. v. Davila*, 542 U.S. 200, 207-08 (2004) (quoting *Beneficial Nat'l Bank*, 539 U.S. at 8). The PAA "expressly provides for removal of [tort actions arising out of nuclear

accidents] brought in state court even when they assert only state-law claims.” *Beneficial Nat’l Bank*, 539 U.S. at 6.

35. A public liability action under the PAA (i.e. an action asserting liability arising out of the hazardous properties of radioactive materials, *see McClurg*, 933 F. Supp. 2d at 1186) is the exclusive, retroactive federal cause of action governing liability for injuries arising out of nuclear incidents. Pub. L. No. 100-408 § 20 (b)(1), 102 Stat. 1084 (“The amendments made [to judicial review of claims arising out of a nuclear incident] shall apply to nuclear incidents occurring before, on, or after the date of the enactment of this Act.”); *O’Conner v. Commonwealth Edison Co.*, 13 F.3d 1090, 1099-1100 (7th Cir. 1994) (holding that under the PAA, as amended, “a state cause of action is not merely transferred to federal court; instead, a new federal cause of action supplants the prior state cause of action”).

36. The Supreme Court has stated the PAA contains an “unusual preemption provision” that “transforms into a federal action” any public liability action. *El Paso Nat. Gas Co. v. Neztosie*, 526 U.S. 473, 484, 119 S. Ct. 1430, 1437 (1999).

37. “The Act... provides for removal to a federal court as of right if a putative Price-Anderson action is brought in a state court[.]” *Id.*

38. “Although the Eighth Circuit has not ruled on the issue of PAA preemption of state-law claims, other appellate courts have exhaustively examined this issue following the 1988 amendments to the PAA, and they have found federal preemption of state-law claims for nuclear incidents.” *Dailey v. Bridgeton Landfill, LLC*, No. 4:17 CV 24 CDP, 2017 U.S. Dist. LEXIS 178309, at *12 (E.D. Mo. Oct. 27, 2017).

39. Indeed, virtually every circuit court to address the issue has concluded the Act completely preempts state law causes of action for public liability resulting from a nuclear

incident. *See In re Berg Litig.*, 293 F.3d 1127, 1132 (9th Cir. 2002); *Roberts*, 146 F.3d at 1306; *Kerr–McGee Corp. v. Farley*, 115 F.3d 1498, 1504 (10th Cir. 1997); *Nieman v. NLO, Inc.*, 108 F.3d 1546, 1553 (6th Cir. 1997); *O’Conner*, 13 F.3d at 1100, 1105; *In re TMI Litig. Cases Consol. II* (“*TMI II*”), 940 F.2d 832, 854 (3d Cir. 1991).

40. “By creating this federal program which requires the application of federal law, Congress sought to effect uniformity, equity and efficiency in the disposition of public liability claims.” *TMI II*, 940 F.2d at 856-57. The complex federal framework envisioned by the PAA included “pervasive federal regulation” that “occupied the entire field of nuclear safety concerns.” *Id.* at 858 (citing *Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm’n*, 461 U.S. 190, 212 (1983)). “[T]he field of nuclear safety has been occupied by federal regulation; there is no room for state law.” *O’Conner*, 13 F.3d at 1105. “A claim growing out of any nuclear incident is compensable under the terms of the Amendments Act or *it is not compensable at all.*” *TMI II*, 940 F.2d at 854 (emphasis in original).

C. Plaintiffs’ Arguments Regarding the PAA are Incorrect

i. Licenses and Indemnification Agreements Are Not Required

41. Moreover, Plaintiffs’ argument here that licenses and indemnity agreements are prerequisites to application of the PAA is misguided. Plaintiffs allege the Act does not apply to their claims because “[t]he Landfill is not and has never been a licensed nuclear facility” and “Defendants have never entered into an indemnification agreement[.]” Compl. ¶ 18.

a. 1988 Amendments Broadened the Act

42. Prior to 1988, automatic federal jurisdiction under the Act applied only to claims arising out of an “extraordinary nuclear occurrence.”³ *Acuna v. Brown & Root, Inc.*, 200 F.3d 335, 339 (5th Cir. 2000).

43. The Three Mile Island nuclear power plant accident laid bare the difficulty in the Act’s narrow applicability. Because the accident did not meet the substantiality requirements of an “extraordinary nuclear occurrence,” the resulting claims could not be consolidated in federal court. *El Paso Nat. Gas Co. v. Neztosie*, 526 U.S. 473, 477 (1999).

44. As a result, Congress amended the Act to broaden federal jurisdiction. *Id.* The 1988 Amendments Act amended section 2210(n)(2) to read, in relevant part:

45. With respect to any public liability action arising out of or resulting from a nuclear incident, the United States district court in the district where the nuclear incident takes place...shall have original jurisdiction without regard to the citizenship of any party or the amount in controversy. Upon motion of the defendant...any such action pending in any State court...shall be removed...to the United States district court having venue under this subsection.

46. Federal jurisdiction now exists “over any actions ‘asserting public liability’ arising from a ‘nuclear incident,’ which generally includes any ‘occurrence’ causing physical harm [or property damage] resulting from the radioactive properties of nuclear materials.” *Estate of Ware v. Hosp. of the Univ. of Pa.*, 871 F.3d 273, 279 (3d Cir. 2017) (hereinafter “*Estate of Ware II*”) (citing *El Paso*, 5287 U.S. at 279). The amendments “deliberately increased the scope of the Act’s coverage.” *Id.* “[O]ne purpose behind the 1988 amendments was to expand the

³ Under the PAA, an “extraordinary nuclear occurrence” is a release of radioactive material which results in offsite radiation levels and damage *which are found to be substantial in nature* by the Nuclear Regulatory Commission. See 42 U.S.C. § 2014(j). The substantiality requirement was the component which limited the cases that qualified for PAA jurisdiction in the pre-1988 amendment period.

scope of federal jurisdiction beyond actions arising from ‘extraordinary nuclear occurrences’ only.” *Acuna*, 200 F.3d at 339.

b. A License is Not a Prerequisite to Application of the Act

47. The definition of a “public liability action” does not require the involvement of a licensee. The PAA applies when an occurrence causes harm to person or property due to radioactive sources. 42 U.S.C. § 2014(q). “[A] ‘public liability action’ is a suit in which a party asserts that another party bears any legal liability arising out of an incident in which the hazardous properties of radioactive material caused bodily injury, sickness, or property damage.” *McClurg v. MI Holdings, Inc.*, 933 F. Supp. 2d 1179, 1186 (E.D. Mo. 2013) (citing *Cotroneo v. Shaw Env't & Infrastructure, Inc.*, 639 F.3d 186, 194 (5th Cir. 2011)).

48. Nothing in the PAA or its definition of a “nuclear incident” limits jurisdiction under the Act based on whether a defendant is also a licensee.

49. Federal courts have repeatedly held that the PAA applies to a broad range of radiation injuries. “In passing the Price-Anderson Act, Congress recognized that a nuclear incident might be caused by any number of participants in the nuclear industry beyond the actual licensee.” *O'Conner v. Commonwealth Edison Co.*, 807 F. Supp. 1376, 1378 (C.D. Ill. 1992), *aff'd*, 13 F.3d 1090 (7th Cir. 1994). *See also Estate of Ware v. Hosp. of the Univ. of Pa.*, 73 F. Supp. 3d 519, 530 (E.D. Pa. 2014) (hereinafter “*Estate of Ware I*”) (expressly rejecting that a public liability claim under the PAA is “limited to nuclear incidents occurring at utilization and production facilities and other licensed facilities”) (internal quotations omitted); *Cotromano v. United Techs. Corp.*, 7 F. Supp. 3d 1253, 1257-58 (S.D. Fla. 2014) (“demonstration of a license for radioactive materials is not a prerequisite to federal jurisdiction under the plain language of the [PAA.]”); *Carey v. Kerr-McGee Chem. Corp.*, 60 F. Supp. 2d 800, 804 (N.D. Ill. 1999)

(rejecting argument to limit PAA to release from a facility that is licensed by the NRC and covered by an indemnification agreement).

c. A Written Indemnification Agreement is Not a Prerequisite to PAA Jurisdiction

50. Nor does the PAA limit itself to parties to indemnification agreements.

51. The Act provides that a “person indemnified” by the licensee and the federal government is “the person with whom an indemnity agreement is executed or who is required to maintain a financial protection, **and any other person who may be liable for public liability.**” 42 U.S.C. § 2014(t) (emphasis added). If only those with an indemnification agreement could be sued for public liability, then Congress’ express directive that indemnification extends to “and any other person who may be liable for public liability” would be superfluous because no other person could be liable. The entire bolded clause, above, would mean nothing.

52. Federal courts have held the Act’s plain meaning indicates the PAA is not limited to parties to indemnification agreements. The Fifth Circuit Court of Appeals wrote, “There is nothing in the definition of ‘nuclear incident’ which suggests it should be contingent on...whether the facility is covered under the separate indemnification portions of the Act.” *Acuna*, 200 F.3d at 339. *See also Estate of Ware I*, 73 F. Supp. 3d at 530-31 (adopting analysis of courts “which have concluded that possession of...an indemnification agreement is unrelated to establishing jurisdiction under PAA”); *Cotromano*, 7 F. Supp. 3d at 1259 (“Whether or not Defendants have indemnification agreements with the federal government is not dispositive of the applicability of Price-Anderson”); *Carey*, 60 F. Supp. 2d at 806 (“there can be an [extraordinary nuclear occurrence] to which no indemnity agreement applies.”).

53. Simply put, whether the conduct alleged by Plaintiffs is a licensed activity or not, or by a licensee or not, and whether any indemnification agreement applies or not, has no bearing

on whether the PAA applies and supplies jurisdiction to this Court because none of these conditions is used to define “occurrence” or, therefore, a “nuclear incident.” Because Plaintiffs seek redress for a nuclear incident, the PAA applies and all state law causes of action are completely preempted.

d. Cotter’s 1969 Source Material License Applies

54. Fundamentally, this case concerns radioactive materials that were allegedly handled, transported, disposed of and possessed by Cotter Corporation (N.S.L.) (“Cotter”) as a licensee of the Atomic Energy Commission (“AEC”).

55. Plaintiffs allege the material at the West Lake Landfill originated from a storage site on Latty Avenue in Hazelwood, Missouri (the “Latty Avenue Site”), and that the movement and disposal of the material at the Landfill resulted in harm to them. Doc. No. 17 ¶¶ 14-21.

56. The material and activities at the Latty Avenue Site were covered by Source Material License No. SUB-1022, issued to Cotter by the AEC (the “Cotter License”). Feingold Decl. (**Exhibit 5**) ¶ 5, Ex. D.⁴ Handling, processing, and movement (including off-site disposition) of the radioactive material located at the Latty Avenue Site was activity the license not only contemplated but required of the licensee, Cotter.

57. Further, in support of its application for termination of the license, Cotter certified that the material had been disposed of in accordance with federal law. Letter from Edward J. McGrath to W. Burkhardt (May 10, 1974), enclosing Certification of Status of Source Material

⁴ The Feingold Declaration was filed in *Dailey v. Bridgeton Landfill, LLC, et al.* E.D. Mo. Case No. 4:17-cv-00024-CDP at Doc. No. 64-1. Ms. Feingold is an attorney for Cotter in that action. The Declaration describes and attaches Source Material Licenses issued between 1963 and 1969 by the Atomic Energy Commission for radioactive material stored and activities performed at the St. Louis Airport Site (“SLAPS”) and the Latty Avenue Site. ¶¶ 1-5, Ex. A-D. For ease of reference, Defendants have attached a true and accurate copy of the Feingold Declaration (and exhibits referenced therein) as **Exhibit 5** to this Notice.

Activities (“Application for Termination”), a true and accurate copy of the relevant portion of which is attached as **Exhibit 6**.

58. The license was terminated by the AEC in reliance on Cotter’s Certification and Application for Termination (among other things). *See* Feingold Decl. (**Exhibit 5**) ¶ 6, Ex. E.

59. Thus, Cotter’s disposal of material at the West Lake Landfill arose from a licensed activity, and the Cotter License is inextricably part of Plaintiffs’ claim.

ii. **Plaintiffs Misrepresent Defendants’ Statements in *Adams***

60. The statement quoted from Defendants Rock Road and Bridgeton’s Memorandum in Support of Motion to Dismiss (the “Memorandum”) in *Adams v. MI Holdings, Inc.* (Eastern District of Missouri Case No. 4:12-cv-00641) (Doc. No. 15), are taken out of context and distinguishable from the case at bar. *See* Compl. ¶ 17.

61. In their Complaint, Plaintiffs cherry-picked a single statement from the two Defendants’ court filings and ignored the context of the statement.

62. *Adams v. MI Holdings, Inc.* (Eastern District of Missouri Case No. 4:12-cv-00641) named only Defendants Rock Road and Bridgeton, and not Republic or Allied.

63. The *Adams* Complaint incorrectly alleged “Defendants or their predecessors and/or agents have at all relevant times held such federal [Nuclear Regulatory Commission] licenses.” Case No. 4:12-cv-00641, Doc. No. 1 ¶ 65. A PAA claim was alleged *based upon* the possession of these licenses and activities in which Defendants Rock Road and Bridgeton were never involved. *Id.* ¶¶ 63-69.

64. In Defendants Rock Road and Bridgeton’s Memorandum in Support of Motion to Dismiss (Doc. No. 15), Rock Road and Bridgeton refuted the specific allegations appearing in

the *Adams* Complaint and the purported effect of those allegations. Rock Road and Bridgeton did not make a general statement of PAA applicability.

65. Rock Road and Bridgeton's Reply Memorandum ("Reply Memorandum") specifically addressed the argument Plaintiffs make here, stating:

It was not the intent of Rock Road and Bridgeton Landfill to argue that non-NRC licensees like defendants Rock Road and Bridgeton Landfill *could not ever* be subject to public liability actions under the Price Anderson Act. Rather, defendants simply state that the allegations contained in Count One of the Complaint, as a matter of fact and by the Complaint's own terms, do not apply to defendants Rock Road and Bridgeton Landfill.

Case No. 4:12-cv-00641, Doc. No. 65 at 12.

66. The *Adams* Motion to Dismiss argued against the exact allegations asserted by those plaintiffs. As clarified in the Reply Memorandum, the *Adams* plaintiffs failed to properly allege a PAA claim against Rock Road and Bridgeton because of the specific wording of that Complaint.

67. By contrast, the instant lawsuit is unquestionably a public liability action alleging a nuclear incident, bringing it within the ambit of the PAA and preempting the state law claims.

68. In failing to include Defendants' clear statement from the *Adams* Reply Memorandum, Plaintiffs misrepresent the pleadings and Defendants Rock Road and Bridgeton's position in that case.

II. Federal Question Jurisdiction Exists Under the Comprehensive Environmental Response, Compensation, and Liability Act

A. CERCLA

69. This Court also has federal question jurisdiction because Plaintiffs seek injunctive relief challenging a Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601 *et seq.*, cleanup in progress at the West Lake Landfill and the

Bridgeton Landfill, both of them parts of the West Lake Landfill Superfund Site (“Superfund Site”).

70. These challenges to a CERCLA cleanup in progress create a separate basis for federal question jurisdiction under 28 U.S.C. § 1331.

71. The Complaint admits the West Lake Landfill and the Bridgeton Landfills are part of the Superfund Site. Compl. ¶ 8.

72. The United States Environmental Protection Agency (the “EPA”) placed the Superfund Site on the National Priorities List (“NPL”) in 1990. *See* <https://www.epa.gov/mo/west-lake-landfill>

73. With limited exceptions not applicable here, a district court “shall have exclusive jurisdiction over all controversies arising under [CERCLA].” 42 U.S.C. § 9613(b).

74. In keeping with the broad interpretation of the goals and purposes of CERCLA, federal jurisdiction under 42 U.S.C. § 9613(b) is more expansive than only those claims expressly created by CERCLA, and covers any challenge to a CERCLA cleanup. *Fort Ord Toxics Project, Inc. v. Cal. Env’t Prot. Agency*, 189 F.3d 828, 832 (9th Cir. 1999).

75. When claims asserted by a party, including state-law claims, interfere with the “primary objectives of CERCLA which include ‘effectuating quick cleanups of hazardous waste sites’ and ‘encouraging voluntary private action to remedy environmental hazards,’” and threaten to “circumvent the goals of CERCLA,” such claims constitute a challenge to CERCLA and “compels [the federal court] to exercise jurisdiction.” *Lehman Bros. Inc. v. City of Lodi*, 333 F. Supp. 2d 895, 904-06 (E.D. Cal. 2004) (quoting *Fireman’s Fund Ins. Co. v. City of Lodi*, 296 F. Supp. 2d 1197, 1217 (E.D. Cal. 2003)).

76. Accordingly, in order to best effectuate the intent of Congress to promote the swift execution of CERCLA cleanups, the exclusive federal jurisdiction provision of 42 U.S.C. § 9613(b) is interpreted to cover any challenge to a CERCLA cleanup, including a challenge to, or interference with, the goals and purposes of CERCLA. *See Fort Ord*, 189 F.3d at 832; *Lehman Bros. Inc.*, 333 F. Supp. 2d at 905-06.

B. Plaintiffs' Claims

77. As described above, this lawsuit centers on allegations of radioactive waste. Every cause of action and relief requested relates to allegations that radioactive waste from the Landfill caused damage to Plaintiffs. *See* Compl. ¶¶ 120-125 (Count I); 133-37 (Count II); 146-48 (Count III); 159-161, 163-64 (Count IV); 173, 174 (Count V); 178-183 (Count VI) 185, 187 (Count VII); 193 (Count VIII); 196 (Count IX).

78. Because of the alleged harm, “Plaintiffs bring this action...to obtain injunctive relief in the form of a total and complete cleanup of the contamination and to prevent and eliminate further contamination.” *Id.* ¶ 32.

79. The injunctive relief Plaintiffs seek is squarely within the exclusive purview of the EPA because Plaintiffs are challenging the cleanup at the Superfund Site.

80. At a press conference on February 21, 2018, Plaintiffs’ counsel Ryan Keane doubled down on Plaintiffs’ challenge to EPA’s currently-proposed cleanup. The statements were transcribed on February 26, 2018 by a certified court reporter. Transcript at 1.⁵ Counsel emphasized the centrality of the injunctive relief sought. He stated:

[I] want more attention on this, and I want this to be fixed now. That’s why we’re bringing these cases. Our cases are not just about getting compensation...No, we have—our class action is two-fold. **And perhaps the most important thing that**

⁵ The transcript is certified by the court reporter. Tr. At 40. A copy of the video of the press conference can be provided to the Court upon request.

we are trying to strive to do is get injunctive relief. We are going to ask the courts to enter an injunction forcing these defendants to fix this mistake.

Tr. at 10:14-:25 (emphasis added).

81. Counsel continued:

[O]ne of the major goals in this case is to get the defendants, not only to compensate these people, but to clean up this mess and stop it from getting worse. So our class action is not only seeking financial compensation for these homeowners who have their homes values diminished, but also **to have them -- the defendants clean up this property. To clean up the landfill, to get rid of this radioactive waste, to do a full and extensive remediation, not 70 percent or part of the way as the EPA may be proposing but now, clean it up now and clean it up thoroughly** because this is a disaster. And to make sure this fire does not reach this radioactive waste. I'm telling you, there's not enough attention on this. It's a scary, scary proposition, and it needs to be addressed. And it just -- **there's been too much inaction.** And so, you know, I'm proud to get involved in this to try to do my best as an attorney to bring attention to this and to use the legal system to try to bring about a remedy.

Tr. at 35:6-36:5 (emphasis added).

82. Plaintiffs' attack of EPA's jurisdiction over the Superfund Site and request for injunctive relief dictating the cleanup clearly makes this a CERCLA challenge. These representations regarding the lawsuit show the importance of the injunctive relief to this lawsuit.

83. Counsel's statements at the press conference are properly considered an "other paper" under 28 U.S.C. § 1446(b) rendering this matter removable. Transcribed oral statements can qualify as an "other paper." In the Eighth Circuit, a plaintiffs' attorney's statements at a hearing "later transcribed, like deposition testimony, satisfy § 1446(b)(3)'s 'other paper' requirement." *Atwell v. Boston Sci. Corp.*, 740 F.3d 1160, 1162 (8th Cir. 2013). *See also Berera v. Mesa Med. Grp., PLLC*, 779 F.3d 352, 365 (6th Cir. 2015) (noting hearing transcripts can be "other papers"); *Middlebrooks v. Johnson & Johnson Co.*, 4:08-CV-54 (CDL), 2008 WL 4003926, at *3 (M.D. Ga. Aug. 26, 2008) (hearing transcript qualified as an "other paper" and the 30-day period to file for removal began after the plaintiff provided an unambiguous statement

regarding the value of her claim at a hearing). Likewise, deposition responses can constitute “other paper” within the meaning of section 1446(b). *Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 887 (9th Cir. 2010); *Peters v. Lincoln Elec. Co.*, 285 F.3d 456, 465 (6th Cir. 2002) (collecting cases).

84. When an attorney clarifies his position on relief sought, the clarification can be an “other paper” rendering a case removable. *See Berera*, 779 F.3d at 365 (noting correspondence between parties and attorneys can be ‘other paper’); *Babasa v. LensCrafters, Inc.*, 498 F.3d 972, 975 (9th Cir. 2007) (letter from attorney is ‘other paper’); *Addo v. Globe Life & Accident Ins. Co.*, 230 F.3d 759, 761-62 (5th Cir. 2000) (post complaint demand letter seeking an amount greater than \$ 75,000 is ‘other paper’).

85. Counsel’s statements make it impossible to mistake what Plaintiffs seek in this lawsuit.

86. Plaintiffs’ requests are a challenge to the ongoing investigation and remedy selection support that is being conducted by certain of the Defendants, under the direction of the EPA, in accordance with CERCLA.

87. Plaintiffs’ allegations regarding radioactive contamination at their property inherently bring the property under the EPA’s jurisdiction because Plaintiffs allege the property contains contamination from the Superfund Site.

88. The Complaint presents a challenge under CERCLA because the relief Plaintiffs seek would interfere with the proposed cleanup that is currently progressing under the Act, would compromise the objectives of CERCLA, and would directly contravene the primary objective of encouraging voluntary action, with federal oversight, to remedy environmental hazards.

89. Here, the EPA – a federal agency with particular expertise in the area of environmental remediation – has jurisdiction over all radiologically impacted material from the Superfund Site. Thus, under Plaintiffs’ allegations that their property has radioactive waste from the Superfund Site, any relief sought in this Complaint would interfere with the EPA’s jurisdiction and potentially subject Defendants to inconsistent judgments.

90. Plaintiffs’ claims concerning radioactive waste, allegations regarding failure to properly remediate the same at the Superfund Site, and requests for injunctive relief therefore require resolution of significant questions of federal law over which this Court has exclusive jurisdiction.

DIVERSITY JURISDICTION EXISTS

91. This Court also has diversity jurisdiction under the Class Action Fairness Act (“CAFA”), 28 U.S.C. §§ 1332(d), 1453.

92. “Under CAFA, federal courts have jurisdiction over class actions in which the amount in controversy exceeds \$5,000,000 in the aggregate; there is minimal (as opposed to complete) diversity among the parties, i.e., any class member and any defendant are citizens of different states; and there are at least 100 members in the class.” *Westerfeld v. Indep. Processing, LLC*, 621 F.3d 819, 822 (8th Cir. 2010)

I. The Amount in Controversy is Met

93. The matter in controversy exceeds \$5,000,000, exclusive of interest and costs. To calculate the amount in controversy under CAFA, “the claims of the individual class members shall be aggregated[.]” 28 U.S.C. § 1332(d)(6)

94. “[W]hen determining the amount in controversy, the question is not whether the damages *are* greater than the requisite amount, but whether a fact finder *might* legally conclude that they are.” *Raskas v. Johnson & Johnson*, 719 F.3d 884, 887 (8th Cir. 2013) (emphasis in

original, internal citations omitted). So long as it is legally possible for an amount to be awarded, the amount may be considered, even if it is highly improbable that Plaintiffs will recover the amounts. *Dammann v. Progressive Direct Ins. Co.*, 856 F.3d 580, 584 (8th Cir. 2017)

95. Exclusive of interests and costs, Plaintiffs request:

- compensatory damages for the loss and use of enjoyment of Plaintiffs' property;
- annoyance and discomfort;
- damage to Plaintiffs' personal property;
- the diminution in the market value of Plaintiffs' property;
- costs and expenses incurred as a result of Plaintiffs' exposure to radioactive emissions, including costs of remediation and relocation;
- double damages for malicious trespass as provided for under Mo. Rev. Stat. § 537.330;
- punitive and exemplary damages;
- injunctive and equitable relief, including directing Defendants to identify members of the class in order to compensate them and to clean up all contamination, and including medical monitoring

Compl. at 44-45.

A. Compensatory Damages

96. Plaintiffs seek recovery of damages for economic loss and non-economic loss.

Plaintiffs have not limited their demand for damages to less than \$5,000,000.

97. There is no precise formula or bright line test that may be used to calculate compensatory damages for determining non-economic losses. *Moore v. Weeks*, 85 S.W.3d 709, 716 (Mo. Ct. App.) (citing *Alcorn v. Union Pacific R.R. Co.*, 50 S.W.3d 226, 250 (Mo. banc

2001)). “Each case must be considered on its own facts, with the ultimate test being whether the award fairly and reasonably compensates the plaintiff for the injuries sustained.” *Id.*

98. When Plaintiffs’ claims are aggregated, as CAFA permits, the amount in controversy easily exceeds \$5,000,000.

i. Trespass

99. The measure of damages for an alleged trespass to real property such as Plaintiffs’ allegations concerning extensive injury, the measure of damages is diminished property value, measured by the difference in fair market value of the entire tract before and after the alleged trespass. *Sterbenz v. Kan. City Power & Light Co.*, 333 S.W.3d 1, 9 (Mo. Ct. App. 2010).

100. Plaintiffs also seek damages under R.S.Mo. § 537.330. That statute permits recovery of “double the value of the things so damaged or destroyed” for malicious trespass to “personal property, goods, chattels, furniture or livestock[.]”

101. Plaintiffs allege widespread injury. They allege radon gas and radioactive particles have migrated onto their property, causing “direct physical interference with Plaintiffs’ property.” Compl. ¶ 125. They allege Defendants are “illegally and improperly using Plaintiffs’ property to store hazardous, toxic, carcinogenic, radioactive wastes.” *Id.* ¶ 126. This is alleged to have caused “significant damage” to Plaintiffs’ property. *Id.* ¶ 127.

102. Across Plaintiffs’ large proposed class, allegations of “hazardous, toxic, carcinogenic, radioactive wastes” being found on the properties which could be remedied by an award of diminished property value result in a significant award. Missouri’s allowance of double damages for Plaintiffs’ allegation of malicious trespass to personal property could enlarge an award and must be made part of the amount in controversy.

ii. Nuisance

103. Counts II and III seek recovery for permanent and temporary nuisance, respectively.

104. Damages for injury from a temporary nuisance include depreciation in the rental or usable value of the property during the continuance of the injury as well as non-economic damages such as discomfort and lost quality of life. *Burg v. Dampier*, 346 S.W.3d 343, 358 (Mo. Ct. App. 2011); *Owens v. ContiGroup*, 344 S.W.3d 717, 729 (Mo. Ct. App. 2011)

105. In *Owens*, 344 S.W.3d at 721, the Missouri Court of Appeals for the Western District affirmed a state court verdict totaling \$11,500,000 awarded as compensatory damages to fifteen individuals claiming economic and non-economic damages caused by a temporary nuisance. One year later, the same court affirmed multiple \$75,000 verdicts awarded as compensatory damages to individuals solely claiming non-economic losses caused by a temporary nuisance. *See McGuire v. Kenoma, LLC*, 375 S.W.3d 157, 184 (Mo. Ct. App. 2012).

106. Given Missouri courts have affirmed large awards for cases involving solely temporary nuisance and with less individuals than in Plaintiffs' class, a factfinder might find for Plaintiffs with a large measure of damages.

107. "Damages for a permanent nuisance are measured by the difference in the land's market value immediately before and after injury[.]" *Frank v. Env'tl. Sanitation Mgmt., Inc.*, 687 S.W.2d 876, 883 (Mo. 1985).

108. As with Plaintiffs' allegations for trespass, calculation of diminished property value across Plaintiffs' large proposed class could result in a sizeable award.

B. Injunctive Relief

109. Plaintiffs filed this lawsuit to require Defendants perform broad injunctive relief. The Complaint requests “injunctive and equitable relief, including directing Defendants to identify members of the Class in order to compensate them and to clean up all contamination, and including medical monitoring [*sic*]...” Compl. at 45.

110. Calculation of the amount in controversy must include “the value of the injunctive relief that the class demands.” *Keeling v. Esurance Ins. Co.*, 660 F.3d 273, 274 (7th Cir. 2011). *See also S. Fla. Wellness v. Allstate Ins. Co.*, 745 F.3d 1312, 1316 (11th Cir. 2014) (value of injunctive or declaratory relief is value of the “object of the litigation”)

111. Plaintiffs describe physical injuries they allege may result due to environmental exposure to radioactive waste. *E.g.*, Compl. ¶¶ 5, 53-57, 74, 89. As a result, they request medical monitoring. *Id.* ¶¶ 35, 189.

112. In 2004 and 2005, respectively, Missouri juries awarded \$20 million and \$15 million to plaintiffs in cases regarding exposure to an environmental contaminant and bronchiolitis obliterans (commonly referred to as popcorn lung). *Peoples v. Int’l Flavors, et al.*, Case No. 01CV683025-07; *Brand v. Bush, et al.*, Case No. 01CV683025-30. *See also* “\$20 Million Lawsuit Verdict, Popcorn Lung Disease,” “\$15 Million Lawsuit Verdict, Diacetyl Personal Injury – Popcorn” <<http://www.hfmlegal.com/verdicts/>>.

113. These cases are akin to the case at bar because they also involve allegations of exposure to an alleged contaminant which plaintiffs claim resulted in personal injury. These awards were in the case of husband and wife plaintiffs, not class actions. It is therefore reasonable to infer that had these allegations of exposure to contaminants causing medical damage been plead across a class the size of Plaintiffs’ proposed class, the award would be in

excess of \$5,000,000. The decisions in these cases establish that under Missouri law a fact finder could reasonably determine that Plaintiffs' claims against Defendants could result in an award of damages in excess of \$5,000,000, exclusive of interest and costs.

114. In the press conference, counsel clarified that Plaintiffs aim to make Defendants excavate the radiologically impacted materials ("RIM") from the West Lake Landfill. Tr. at 10:14-:25; 35:6-36:5.

115. As part of the Superfund process, the Potentially Responsible Parties at the Superfund Site have estimated costs for full excavation of RIM. At a 7% discount rate, the 30-year present worth costs of the projects are: \$455 million for the Full Excavation of RIM with Off-Site Disposal Alternative and \$391 million for the Full Excavation of RIM with On-Site Disposal Alternative. "Final Feasibility Study," dated January 26, 2018, page ES-7, 545 available at <<https://semspub.epa.gov/work/07/30352116.pdf>>

116. Thus, Plaintiffs' requested injunctive relief alone requires well in excess of \$5,000,000.

C. Compensatory Damages

117. Plaintiffs request punitive damages against Defendants. Compl. ¶¶ 196-199.

118. This amount should be included when determining the amount in controversy. *See Raskas*, 719 F.3d at 887 (including punitive damages in calculation of CAFA amount in controversy); *OnePoint Solutions, LLC v. Borchert*, 486 F.3d 342, 348 (8th Cir. 2007) (punitive damages can be included when determining the amount in controversy).

119. In Missouri, punitive damages can be up to "the greater of five hundred thousand dollars or five times the net amount of the judgment[.]" R.S.Mo. § 510.265. The "net amount of

the judgment” for purposes of calculating punitive damages includes the attorney's fee award. *Hervey v. Mo. Dep't of Corr.*, 379 S.W.3d 156, 165 (Mo. 2012).

120. Thus, to the extent a factfinder finds Plaintiffs are entitled to punitive damages and attorney's fees, subject to Constitutional constraints, the greater of \$500,000 or five times the net judgment could be added to the award and, therefore, must be added to the amount in controversy.

121. All told, Plaintiffs seek varied damages across a broad class definition in a metropolitan area. Together, Plaintiffs' allegations and relevant Missouri law establish it is legally possible, even if not probable, that Plaintiffs' claims can exceed \$5,000,000. Bridgeton is informed and believes, and on that basis alleges, that the amount in controversy in this case satisfies the requirements of 28 U.S.C. § 1332(d) because the amount in controversy in the Lawsuit exceeds \$5,000,000, exclusive of interests and costs.

II. Minimal Diversity Exists

122. Minimal diversity is present in this matter. Plaintiffs are Missouri citizens. Compl. ¶ 13. Defendant Republic Services, Inc. is a Delaware corporation with its principal place of business in Arizona. Accordingly, Republic is a citizen of Delaware and Arizona for purposes of diversity jurisdiction. *See* 28 U.S.C. § 1332(c)(1).

III. There Are At Least 100 Members in the Proposed Classes

123. The requirement that the class contain at least 100 members is measured by “the proposed plaintiff classes [.] 28 U.S.C. § 1332(d)(5)(B). It is measured by the class as proposed by the plaintiff in the complaint. *See Brown v. Mortg. Elec. Registration Sys.*, 738 F.3d 926, 932 (8th Cir. 2013) (CAFA removal appropriate even when, on appeal, plaintiff tries to restrict class to fall below 100 members).

124. There are at least 100 members in the proposed classes. Plaintiffs propose a “Property Damage Subclass” and a “Medical Monitoring Subclass.” Both are defined with the same approximately 11-square mile area in a major metropolitan area. *See* Compl. ¶¶ 34, 35.

125. The “Property Damage Subclass” is defined as:

All Missouri citizens who currently own real property within the 11.0 square mile geographic region in the vicinity of the West Lake Landfill, as shown in the map in Figure 1 below, bounded by the Missouri River to the west and a line south of Rt. 370 to the north, with the eastern boundary following a southerly line across Old St. Charles Rd. before crossing the residential area lying to the south of the landfill.

Id. ¶ 34.

126. The “Medical Monitoring Subclass” is defined as:

All Missouri citizens who currently reside, or have resided since 1973, on a property within the 11.0 square mile geographic region in the vicinity of the West Lake Landfill, as shown in the map in Figure 1 above, bounded by the Missouri River to the west and a line south of Rt. 370 to the north, with the eastern boundary following a southerly line across Old St. Charles Rd. before crossing the residential area lying to the south of the landfill.

Id. ¶ 35.

127. “‘Own,’ in the context of the class and subclass definitions, includes those who hold any fee simple estate or life estate.” *Id.* ¶ 34.

128. Plaintiffs allege, “The proposed Classes are so numerous that the individual joinder of all absent class members is impracticable.” *Id.* ¶ 38.

129. As proposed by Plaintiffs, these classes will clearly have more than 100 members. With Plaintiffs’ definition of “own,” including any holders of fee simple or a life estate, the number of proposed class members exceeds the number of parcels in the area. The 11-square mile area proposed is in a major metropolitan area in North St. Louis County, Missouri. On

information and belief, there are over 100 businesses and personal properties in the proposed class. As such, there are over 100 members of the proposed plaintiff classes.

REMOVAL TO THIS JUDICIAL DISTRICT IS PROPER

130. Venue is proper in the Eastern Division of the United States District Court for the Eastern District of Missouri under 28 U.S.C. §§ 1441(a) and 1446(a) because the Circuit Court of St. Louis County, Missouri is located within the Eastern Division of this judicial district pursuant to Local Rule 3-2.07(A)(1).

131. Venue is also proper pursuant to Local Rule 3-2.07(B)(2) because the lawsuit is a civil action brought against multiple defendants, at least one of which is a resident, and the claims for relief are alleged to have arisen in Bridgeton, St. Louis County, Missouri.

DEFENDANTS HAVE COMPLIED WITH ALL PROCEDURAL REQUIREMENTS OF REMOVAL

132. As required by 28 U.S.C. § 1446(a) and Local Rule 81-2.03, true and correct copies of all pleadings on file with the Circuit Court of St. Louis County to date are attached hereto.

133. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of this Notice of Removal will be promptly served on Plaintiffs' counsel and the Clerk of the Circuit Court of St. Louis County.

134. Bridgeton reserves the right to assert any and all defenses to Plaintiffs' Complaint.

135. Defendants reserve the right to amend or supplement this Notice of Removal.

136. Pursuant to Local Rules 3-2.03 and 3-2.09, attached hereto are Defendants' Civil Cover Sheet and the Original Filing Form. Defendants' Disclosure of Organizational Interests Certificates will be separately filed by the individual Defendants.

137. Defendants have not answered the Petition in state court, and will do so consistent with Fed. R. Civ. P. 8.

WHEREFORE, Bridgeton Landfill, LLC (on its own behalf and as the merger successor of West Lake Landfill, Inc. and the merger successor of Rock Road Industries, Inc.), with the consent of Defendants Republic Services, Inc. and Allied Services, LLC, respectfully removes the Lawsuit now pending in the Circuit Court of St. Louis County, State of Missouri to this Court.

Dated: April 27, 2018

LATHROP GAGE LLP

By: /s/ William G. Beck

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above pleading was served via the U.S. District Court ECM/ECF system and via First Class Mail, postage prepaid, on the following counsel of record, this 27th day of April, 2018:

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/s/ William G. Beck
An Attorney for Defendants

EXHIBIT 1

**TWENTY-FIRST JUDICIAL CIRCUIT OF THE STATE OF MISSOURI
ST. LOUIS COUNTY**

**JOHN C. KITCHIN, JR., and NORTH
WEST AUTO BODY COMPANY, on behalf
of themselves and all others similarly situated,**)

Plaintiffs,)

vs.)

**BRIDGETON LANDFILL, LLC,
Serve at:**)

The Corporation Company)
Registered Agent for)
Bridgeton Landfill, LLC)
120 South Central Avenue)
Clayton, MO 63105)

**REPUBLIC SERVICES, INC.,
Serve at:**)

CT Corporation Services)
Registered Agent for)
Republic Services, Inc.)
2390 E. Camelback Road)
Phoenix, AZ 85016)

**ALLIED SERVICES, LLC,
Serve at:**)

The Corporation Company)
Registered Agent for)
Allied Services, LLC)
120 South Central Avenue)
Clayton, MO 63105)

and)

**ROCK ROAD INDUSTRIES, INC.,
Serve at:**)

C T Corporation System)
Resident Agent for)
Rock Road Industries, Inc.)
120 South Central Avenue)
Clayton, MO 63015)

Cause No.

Division No.

JURY TRIAL DEMANDED

Defendants.)
)

CLASS ACTION PETITION

COME NOW Plaintiffs John C. Kitchin, Jr. and North West Auto Body Company, on behalf of themselves and all others similarly situated, by and through counsel, and for their Class Action Petition against Defendants Bridgeton Landfill, LLC, Republic Services, Inc., Allied Services, L.L.C., and Rock Road Industries, Inc, state and allege as follows:

1. Since World War II, big companies have made significant profits processing, handling, and storing radioactive materials in the St. Louis area. This activity began seven decades ago, when a government contractor began processing uranium ores in downtown St. Louis City. The hazardous, toxic, carcinogenic, radioactive wastes resulting from the processing of these ores are ounce for ounce some of the most dangerous materials on the planet. Despite knowing that that these materials were some of the most harmful substances on Earth, the Defendants accepted these wastes and used them for daily cover at their landfill. Despite knowing that these materials were radioactive, the Defendants allowed them to be released as building material to an unknown number of people, which was subsequently incorporated into buildings and driveways in the St. Louis metropolitan area. Defendants treated these hazardous, toxic, carcinogenic, radioactive wastes with about the same level of care that a reasonable person might give to common household garbage, dumping it without authority from the State of Missouri and in violation of law, like everyday trash into the West Lake Landfill—a landfill which experts indicate is not even suitable for garbage, as it contains no liner.

2. Since then, that radioactive material, negligently dumped in an area surrounded by peaceful neighborhoods and playgrounds, has tormented the lives of everyday people—moms and dads who thought they were raising their kids in a clean home in a safe, quiet neighborhood; kids who want nothing more than to play in the backyard; and small business owners who had invested everything to build the American dream for their families. These everyday St. Louisans now find their lives disrupted, their homes contaminated, their businesses upended, and their properties devalued. They find their once-quaint neighborhoods filled with technicians testing and prodding their backyards and the dust of their vacuum cleaners to identify the quantity and the toxicity of the radioactive material Defendants have dumped into their lives.

3. Business owners spent substantial sums of money developing Earth City, which is now encompassed within impacted zone, and included in the scope of the class, as defined herein.

4. Tests conducted by representatives of the United States of America and others now confirm that the areas around the West Lake and Bridgeton Landfills (referred to herein as the “Landfill” which consists of several inactive landfills including West Lake and Bridgeton) are contaminated with the same radioactive wastes generated in the processing of uranium ores in the St. Louis area. The off-site radioactive waste found today in the real property, which contains business and homes, surrounding the Landfill has the fingerprint (or profile) of the ore processed in St. Louis which generated the hazardous, toxic, carcinogenic, radioactive wastes that were dumped into and around the Landfill.

5. These radioactive wastes are known human carcinogens that can cause chronic damage to the skin, reproductive system, blood forming system, digestive system, central nervous

system, and immune system in addition to numerous cancers. Illnesses such as cancers or birth defects may take a number of years after exposure to the radioactive material to appear.

6. Defendants have failed to take responsibility for their negligent behavior, failed to clean up the area, failed to move the residents and businesses out, and failed to make amends for the widespread damage they have caused. Instead, Defendants have hidden behind misstatements and omissions, misleading the public about the widespread contamination Defendants have caused and minimizing the immense risks to public health and safety that resulted from Defendants' actions.

7. It is time that Defendants finally be held accountable for their reckless and tortious conduct. This particular lawsuit seeks to correct the harm Defendants inflicted on just a few of the victims.

8. The Landfill is Superfund site, and the U.S. Environmental Protection Agency ("EPA") administrator, Scott Pruitt, has recently ordered at least a \$200 million plus cleanup that will take many years to complete. This cleanup will result in the uncovering and handling of radioactive wastes that will result in additional releases from the site. (This statement is provided for informational purposes only, as Plaintiff are making no claims under the laws of the United States).

9. Plaintiff John C. Kitchin, Jr. owns property in Bridgeton, Missouri that Defendants contaminated. His property, including the land and building (hereinafter "North West Auto Body Property"), is contaminated with radioactive wastes from the Landfill, that are hazardous, toxic, carcinogenic.

10. Plaintiff North West Auto Body Property has lost significant business, revenue and customers as a result of the hazardous, toxic, carcinogenic, radioactive wastes from the Landfill, and will incur substantial additional costs in the future, including but not limited to future lost business and relocation costs.

11. Plaintiffs, as well as all members of the proposed class, have sustained significant damages, as a result of Defendants' conduct. Defendants should compensate Plaintiffs for their damages, and provide further relief as set forth below in this Petition.

JURISDICTION AND VENUE

12. This court has jurisdiction over the subject matter and the parties in this case because the causes of action stated in this Petition arose out of business activities conducted solely in Missouri, and out of torts committed solely in Missouri by resident and non-resident defendants.

13. Complete diversity does not exist in this matter as Defendant Rock Road Industries is a Missouri corporation and Plaintiffs are Missouri citizens.

14. Venue is proper in this court pursuant to Mo. Rev. Stat. §508.010, because Defendants' conduct giving rise to this action took place in St. Louis County, Missouri.

15. Plaintiffs do not allege any causes of actions arising under any laws of the United States.

16. Defendants Rock Road Industries and Bridgeton Landfill, LLC previously declared that the Price-Anderson Act does not apply to them because the West Lake Landfill is not a licensed nuclear facility: "Count One, arising under the Price-Anderson Act, is wholly inapplicable

to Rock Road and Bridgeton Landfill, as the West Lake Landfill is not a nuclear facility subject to licensing by the nuclear Regulatory Commission.”¹

17. Plaintiffs’ claims do not fall within the scope of the Price Anderson Act. The Landfill is not and has never been a licensed nuclear facility. The landfill has never received a license to possess, transport, or dispose of any radioactive wastes. Defendants have never entered into an indemnification agreement with the United States government under 42 U.S.C. § 2210 with respect to the complained activities.

18. Plaintiffs expressly contend that no occurrences that form the basis for this suit rise to the level of a nuclear incident. Plaintiffs’ claims are freestanding state law claims concerning traditional state regulation and do not implicate the Price-Anderson Act and its textually manifest concerns related to liability limitation and indemnification. This principle was clearly enunciated by the Hon. Neil Gorsuch in the case of *Cook v. Rockwell Intern. Corp.*, 790 F.3d 1088 (10th. Cir. 2015) also known as the Rocky Flats litigation.

19. At the time of the outrageous, reckless, negligent acts that form the basis for this lawsuit occurred, the Price-Anderson Act did not apply because the wastes at issue were not subject to said Act.

20. The Price-Anderson Act does not apply to the indisputably hazardous, toxic and carcinogenic wastes at issue in this Petition.

THE PARTIES

Plaintiffs

¹ Defendants Rock Road Industries and Bridgeton Landfill, LLC’s Memorandum in Support of Motion to Dismiss (Doc 15), *Adams v. MI Holdings, Inc.* Case No. 4:12-cv-00641-JCH

21. Plaintiff John C. Kitchin, Jr. is a Missouri citizen who owns real property located at 12990 St. Charles Rock Road, (“North West Auto Body Property”) including an automotive body shop owned and operated by Mr. Kitchin’s family, North West Auto Body Company. Plaintiff purchased the North West Auto Body Property in 1995. The property adjoins what is now the Landfill in Bridgeton, Missouri. Plaintiff John C. Kitchin, Jr. first learned that the North West Auto Body Property was contaminated with radioactive material in 2017.

22. As a result of Defendants’ acts and omissions, Plaintiffs have sustained significant damages including damages to their property and the loss of use and enjoyment thereof.

Defendants

23. In this Petition, the defendants in this lawsuit are categorized into two groups, namely the owners and operators of the Landfill:

A. Landfill Owner Defendants

- i. Bridgeton Landfill, LLC, which owns the Bridgeton and West Lake Landfills; and
- ii. Rock Road Industries, Inc., which owned or owns the West Lake Landfill.

B. Landfill Operator Defendants

- i. Republic Services, Inc., which owns, oversees, and directs the environmental decisions and conduct of Bridgeton Landfill, LLC, Allied Services, L.L.C., and Rock Road Industries, Inc., and operates the Bridgeton and West Lake Landfills; and
- ii. Allied Services, L.L.C., which operates Bridgeton and West Lake Landfills.

24. Since at least November 2010, the Defendants have owned and/or operated the Bridgeton and West Lake Landfills.

25. Republic Services, Inc. (“Republic”) is a Delaware corporation with its principal place of business in the State of Arizona that carries on continuous and systematic business activities within the State of Missouri.

- A. Republic describes itself as “the second largest provider of services in the domestic non-hazardous solid waste industry, as measured by revenue as well as a Fortune 500 company, publicly traded on the New York Stock Exchange (NYSE; RSF).”² Despite Republic’s record of violations and the widespread injuries resulting from Republic’s conduct, Republic promises the public that it lives by “high environmental and sustainability standards.”³ Republic has engaged in extensive professional public relations efforts to downplay the significance of the problem, and their misleading statements can only be characterized as mere “puffery.”
- B. Republic’s presence in Missouri is immense, servicing more than 300 cities and towns throughout the state, including many in St. Louis County.⁴ Republic continuously and systematically avails itself of the protection of Missouri laws in St. Louis County courts, and regularly appears to defend itself in lawsuits tried here. Republic is responsible for promulgating and enforcing environmental and health

² <https://www.republicservices.com/about-us>

³ <http://www.republicservices.com/customer-support/facilities>

⁴ <https://www.republicservices.com/locations/missouri>

and safety policies and procedures to its subsidiaries, which in this case they failed to adequately do.

- C. This lawsuit arises out of damages that resulted from Republic's acts and omissions within the State of Missouri. Since 2008, Republic and its subsidiaries have maintained daily operational and managerial control over the management and environmental decisions of the Bridgeton and West Lake Landfills, decisions which gave rise to the violations of law and damage to property alleged in this Petition. Republic did so directly and through its subsidiaries Allied Services, LLC, Bridgeton Landfill LLC, and Rock Road Industries, Inc.

26. Allied Services, LLC ("Allied"), a Delaware limited liability company with its principal place of business in the state of Arizona, is a wholly-owned subsidiary of Republic Services, Inc., that continuously and systematically conducts business in the State of Missouri under its own name and under the fictitious name "Republic Services of Bridgeton."

- A. Allied conducts daily operations of the Bridgeton Landfill and the West Lake Landfill.
- B. Allied regularly and routinely avails itself of the protection of Missouri laws in St. Louis County courts, and regularly appears to defend itself in lawsuits tried here.
- C. This lawsuit arises out of damages that resulted from Allied's acts and omissions within the State of Missouri. Since 2008, Allied has maintained daily operational and managerial control over the management and environmental decisions of the Bridgeton and West Lake Landfills, decisions which gave rise to the violations of law and damage to property alleged in this Petition.

D. Allied has also promulgated environmental and health and safety policies and procedures to its subsidiaries, which in this case they failed to adequately do.

27. Bridgeton Landfill, LLC formerly “Laidlaw Waste Systems” (“Landfill Owner”), is a Missouri limited liability company with its principle place of business in the State of Missouri. It continuously and systematically conducts business activities in the State of Missouri.

- A. Upon information and belief, Bridgeton Landfill, LLC owns the Bridgeton Landfill and the West Lake Landfill.
- B. Bridgeton Landfill has continuously and systematically availed itself of the protection of Missouri laws in St. Louis County courts, and regularly appears to defend itself in lawsuits tried here.
- C. This lawsuit arises out of damages that resulted from Bridgeton Landfill’s acts and omissions within the State of Missouri. Specifically, since 2008, Bridgeton Landfill has owned, operated and maintained daily operational and managerial control over the management and environmental decisions of the Bridgeton Landfill and the West Lake Landfill, which gave rise to the violations of law and damage to property alleged in this Petition.

28. Rock Road Industries, Inc. (“Rock Road”) is a Missouri corporation with its principal place of business in St. Louis, Missouri. Rock Road is a wholly-owned subsidiary of Republic Services, Inc. that continuously and systematically conducts business in the State of Missouri.

- A. This lawsuit arises out of damages that resulted from Rock Road Industries, Inc.’s acts and omissions within the State of Missouri. Upon information and belief Rock

Road Industries, Inc. owns the West Lake Landfill along with Bridgeton Landfill, LLC. Rock Road Industries has maintained daily operational and managerial control over the management and environmental decisions of the West Lake Landfill, decisions which gave rise to the violations of law and damage to property alleged in this Petition.

CLASS ACTION ALLEGATIONS

29. Plaintiffs file this class action petition pursuant to Missouri Supreme Court Rule 52.08 on behalf of all owners of residential property in the vicinity of the West Lake Landfill as detailed below.

30. Plaintiffs bring this action on behalf of themselves and the Class against Defendants to recover damages to their property and to obtain injunctive relief in the form of a total and complete cleanup of the contamination and to prevent and eliminate further contamination.

31. This action is maintainable as a class action and should be certified under Missouri Supreme Court Rule 52.08.

32. The proposed class for commercial and industrial property damage claims is defined as follows (“Property Damage Subclass”):

All persons who currently own real property within the 11.0 square mile geographic region in the vicinity of the West Lake Landfill, as shown in the map in Figure 1 below, bounded by the Missouri River to the west and a line south of Rt. 370 to the north, with the eastern boundary following a southerly line across Old St. Charles Rd. before crossing the residential area lying to the south of the landfill.

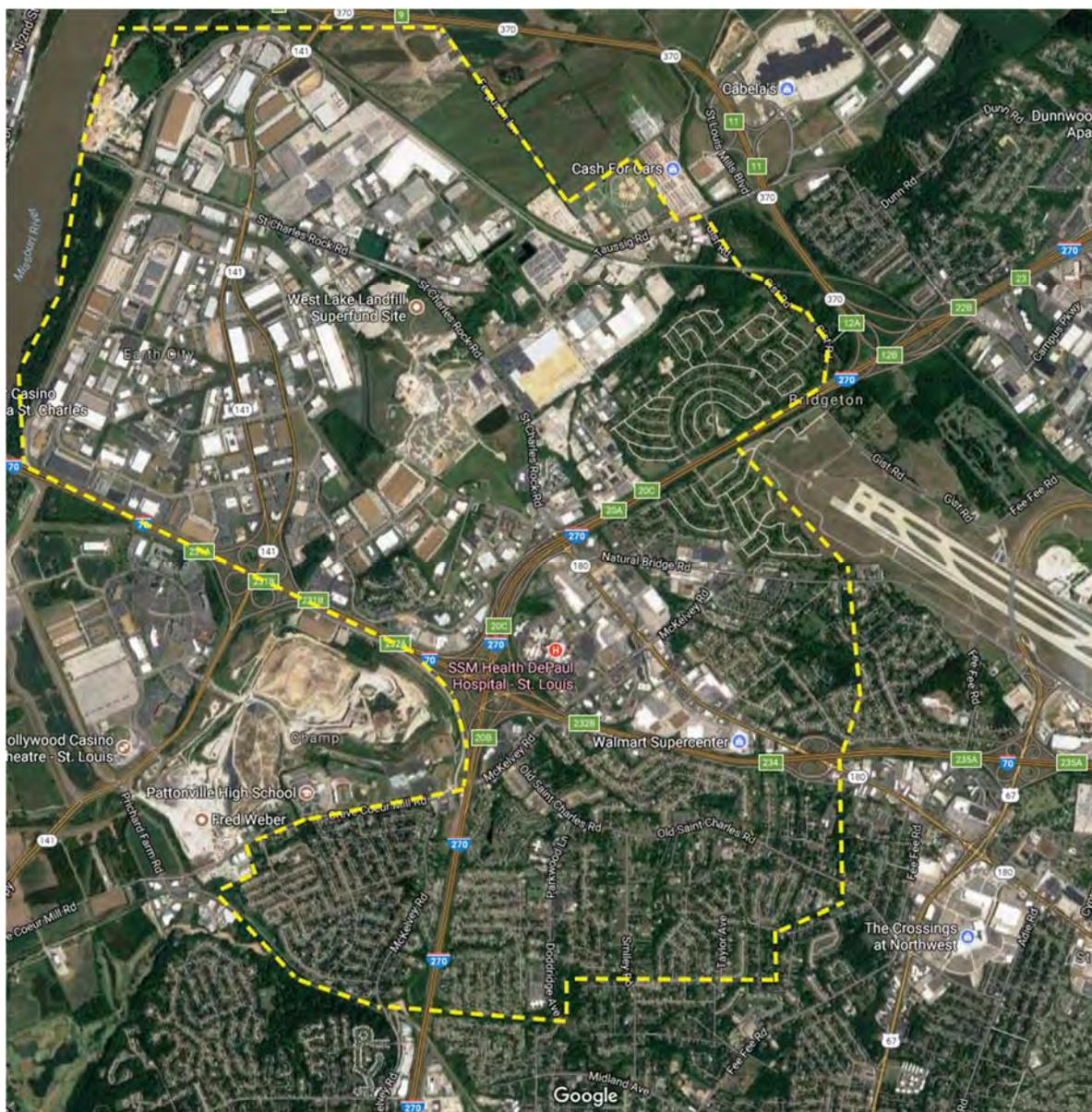


Figure 1. Class Area

“Own,” in the context of the class and subclass definitions, includes those who hold any fee simple estate or life estate.

33. The proposed class for medical monitoring is defined as follows (“Medical

Monitoring Subclass”):

All persons who currently own real property within the 11.0 square mile geographic region in the vicinity of the West Lake Landfill, as shown in the map in Figure 1 above, bounded by the Missouri River to the west and a line south of Rt. 370 to the north, with the eastern boundary following a southerly line across Old St. Charles Rd. before crossing the residential area lying to the south of the landfill.

34. Excluded from the Property Damage Subclass and the Medical Monitoring Subclass (collectively, the “Class”) are Defendants and their officers, directors, and employees, as well as employees of any of Defendants’ subsidiaries, affiliates, successors, or assignees. Also excluded are the immediate family members of the above persons. Also excluded is any trial judge who may preside over this case. Also excluded from the class are persons who previously entered into valid and enforceable settlements of property damage claims related to the claims asserted herein with any of the Defendants.

35. The requirements for maintaining this action as a class action are satisfied, as set forth immediately below.

36. The proposed Classes are so numerous that the individual joinder of all absent class members is impracticable. While the exact number of absent Class Members is unknown to Plaintiffs currently, it is ascertainable by appropriate discovery and Plaintiffs, upon information and belief, allege that the proposed Class includes more than twenty-five members. The requirement of numerosity is therefore satisfied.

37. Common questions of law or fact exist as to all proposed Class Members and predominate over any questions which affect only individual members of the proposed Classes, and the answers to which will drive classwide resolution of Plaintiffs’ claims asserted herein.

These common questions of law or fact include:

- a. Whether Defendants engaged in the abnormally dangerous activity of storing radioactive waste;
- b. Whether Defendants unreasonably and unlawfully stored radioactive materials at the West Lake Landfill;
- c. Whether Defendants created and continue to create a high degree of risk of harm to Plaintiffs' and Class Members' property;
- d. Whether Defendants have intentionally, unreasonably, negligently, recklessly, willfully, wantonly and maliciously allowed the emission of radon gas and radioactive particles onto and around Plaintiffs' and Class Members' property;
- e. Whether Defendants' conduct or omissions affecting land surrounding the West Lake Landfill resulted in Plaintiffs' and Class Members' loss of use and enjoyment of their property;
- f. Whether the loss in property value suffered by Plaintiffs and Class is a result of Defendants' actions;
- g. Whether Plaintiffs and Class are entitled to damages; and
- h. Whether Defendants' conduct rises to the level of willfulness so as to justify punitive damages.

38. The claims of the Plaintiffs are typical of the claims of the Classes. Plaintiffs and all Class Members own land located near the location where Defendants recklessly dumped radioactive waste.

39. Plaintiffs will fairly and adequately represent the interests of the members of the

Class. Plaintiffs have no interest adverse to the interests of the members of the Class. Plaintiffs have retained competent attorneys who have experience in class action litigation.

40. Defendants have acted or refused to act on grounds that apply generally to the Class as discussed herein, such that final injunctive relief is appropriate for the Class as a whole.

41. Unless a class-wide injunction is issued, Defendants will continue to allow contamination of the properties of Plaintiffs and Class and will continue to violate Missouri law resulting in harm to thousands of Missouri citizens.

42. A class action is a superior method for the fair and efficient adjudication of this controversy. The adjudication of a separate action by individual members of the classes would create a risk of (a) inconsistent or varying adjudications with respect to individual members of the class; or (b) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests. Upon information and believe each of the Class Members suffered the same sort of damages and injuries as those suffered by the Plaintiffs, due to the contamination of their property by radioactive waste from the West Lake Landfill. In addition, this class action will allow for the resolution of identical claims in an efficient manner that avoids fragmented litigation in which inconsistent results could occur.

43. Questions of law or fact common to the members of the Classes predominate over any questions affecting only individual members. There is no special interest in the members of the classes individually controlling the prosecution of separate action. The expense and burden of individual litigation make it impossible for the Class Members individually to address the wrongs done to them.

44. There will be no difficulty in managing this lawsuit as a class action. Evidence relating to Defendants' alleged violations will be applicable to all members of the class; there are accepted means for notifying class members who have suffered injuries and damages described herein.

45. More than two-thirds of the class members are citizens of Missouri.

46. The principal injuries resulting from the conduct of the Defendants were incurred in Missouri.

47. No class action asserting similar factual allegations has been filed against any of the defendants in the preceding three years.

48. Rock Road Industries, Inc. and Bridgeton Landfill, LLC are Missouri citizens from whom significant relief is sought and whose conduct forms a significant basis of the below claims.

FACTS

Radioactive Wastes

49. Ounce for ounce, radioactive isotopes are the most toxic materials known to man.

50. Radiation is a type of energy transmitted over a distance. Some materials spontaneously emit radiation through a process known as radioactive decay. As these materials decay they release radiation energy and transform into other radioactive materials which will then also decay by releasing radiation energy and transforming into other materials.

51. Some radiation energies, including the radiation from the decay of radioactive materials used in nuclear and atomic processes, such as uranium, have the ability to penetrate other

material. When radiation energy interacts with other material, it causes a process called ionization⁵ which can damage chemical structures. When the “other material” that ionizing radiation passes through is human cells, it can cause damage within those cells resulting in mutation in genetic material which can lead to cancer and other harms.

52. People are exposed to radiation in two ways: external exposure from radioactive material in the environment and internal exposure by radioactive material that has entered the body. Radioactive material can be taken into the body by consuming foodstuffs and liquids with radioactivity in them, by inhaling radioactive gases or aerosol particles, or by absorption through wounds in the skin. The material taken in will internally expose the organs and tissues for as long as it remains inside the body.

53. One characteristic of the impact of exposure to ionizing radiation on the human body through both internal and external exposure is that even if the energy absorbed is low, the biological effects can still be gravely serious. The second characteristic is that there are latent biological effects of radiation.

54. The injuries resulting from exposure to ionizing radiation can also be separated into two categories: somatic injuries and genetic injuries. Somatic injuries are damages to the individual exposed. This can be damages to the skin, reproductive system, blood forming system,

⁵ Ionizing radiation is described as follows in the literature: “Ionizing Radiation is a form of radiation that includes alpha particles, beta particles, gamma rays, x-rays, neutrons, high-speed electrons, high-speed protons, and other particles capable of producing ions. Ionizing radiation has enough energy to cause changes in atoms through a process called ionization. Ionization can affect the atoms in living things and depending on the dose and exposure, can pose a serious health risk to humans. Ionizing radiation has sufficient energy to cause chemical changes in cells, causing damage to tissue and DNA in genes.” <https://www.epa.gov/radiation/radiation-health-effects>

digestive system, central nervous system, and immune system, as well as cancers. Illnesses such as cancers may take a number of years to appear.

55. Genetic injury is damage to the reproductive cells of the exposed individual in the form of mutation of their genetic cells. As a result, the probability of detrimental effects to the descendants of the exposed persons may greatly increase. These genetic mutations can be passed down to a person's offspring even generations later. These injuries include birth abnormalities and cancer.

56. One of the most dangerous aspects of radioactive materials is the length of time that radioactive isotopes will persist and accumulate in the environment. As detailed above, radioactive materials decay over time and each radioactive material gives off radiation energy as it decays and transforms into a different material. The rate at which a radioactive isotope decays is measured in half-life. The term "half-life" is defined as the time it takes for one-half of the atoms of a radioactive material to disintegrate. For example, after one half life, there will be one half of the original material, after two half-lives, there will be one fourth the original material, after three half-lives one eighth the original sample, and so forth.

57. Radium-226 has a half-life of 1,600 years. Radium-226 eventually decays to lead-210 and polonium-210. This means that as the radium-226 decays, it increases the lead-210 and polonium-210 at the Landfill and in the surrounding environment. Furthermore half of the hazardous, carcinogenic radium-226 currently contaminating the West Lake Landfill will still remain as a grave problem even after 1,000 years from now if it is not physically removed. This is described in the scientific literature as follows:

Importantly, because the concentrations of short-lived radionuclides will progressively increase, the radioactivity at the site will likewise increase for the foreseeable future. For example, according to NRC, if the present day activity of ^{230}Th is estimated to be 100 times that of ^{226}Ra , then the alpha activity due to ^{226}Ra decay will increase fivefold over present levels in 100 years, nine-fold in 200 years, and 35-fold in 1000 years.⁶

58. According to the EPA's proposed corrective action plan of February 2, 2018, the risks related to radioactive materials at the Landfill will "increase in the future due to ingrowth of radium-226 from its parent thorium-230. These risks will increase according to the radioactive decay of thorium and will result in peak risks in approximately 9,000 years."

Radioactive Waste in the St. Louis Area

59. From 1942 to 1957, uranium ore was processed in downtown St. Louis City in association with the Manhattan Project.⁷ The Manhattan Project was the U.S. research project designed to develop the first nuclear weapons.

60. This downtown St. Louis facility was known as the St. Louis Downtown Site (the "SLDS") and was used to process uranium.

61. In the late 1940s, the Manhattan Project acquired a 21.7-acre tract of land near Lambert airport to store the hazardous, toxic, carcinogenic radioactive wastes from the uranium processing operations at the SLDS. The storage site near the airport is now referred to as the St. Louis Airport Site or SLAPS ("SLAPS").

⁶ Criss (2013) at 2-3 (citations omitted).

⁷ See n.10 (citing Alvarez (2013) and DeGarmo (2006)).

62. Radioactive wastes accumulated at SLAPS. These hazardous, toxic, carcinogenic, radioactive waste materials included pitchblende raffinate residues, radium-bearing residues, barium sulfate cake, Colorado raffinate residues, and were stored at SLAPS along with contaminated scrap. Some of these radioactive wastes were stored in bulk on the open ground in piles.

63. In the 1960's, some of the hazardous, toxic, carcinogenic radioactive wastes that had been stored at SLAPS were moved to a storage site on Latty Avenue in Hazelwood, Missouri (the "Latty Avenue Site") (part of this site later became the Hazelwood Interim Storage Site ("HISS")).

64. In or about 1973 the Defendants accepted over 46,000 tons of radioactive wastes combined with contaminated soil. Upon information and belief, despite knowing that the owner of these wastes was trying to dispose of dangerous radioactive materials for which the Landfill was not permitted to accept, the radioactive waste mixture was used by Defendants as daily cover for the Landfill. Defendants dumped the radioactive wastes into the Landfill and intentionally spread these wastes over a large area.

65. The scientific literature summarizes this dumping as follows:

In 1973, 8700 tons of radionuclide-bearing "leached barium sulfate" was allegedly dumped in an unlined Landfill in Bridgeton, MO that was not licensed to receive radwaste. This report finds that 1) the chemical and physical character of the radioactive materials has not been adequately characterized, and barium sulfate is probably not a major constituent; 2) the alpha and beta emissions of this material will increase 10x to 100x over present levels, reaching maximum activity in about 9000 years; 3) the Landfill has no protective barriers and a proximal subsurface fire; 4) the site has several hydrologic and geologic risk factors that magnify its unsatisfactory location in a populated area; 5) nuclear material has been in contact

with percolating waters and with a fluctuating water table; 6) groundwaters contaminated with radionuclides have migrated far from the original location of disposal; 7) background levels of radiation have been overstated, while other risks have been underestimated⁸

The Landfill

66. The West Lake Landfill is situated on about 200 acres at 13570 St. Charles Rock Road, in the City of Bridgeton. The Missouri River lies about one and one-half miles to the north and west of the Landfill. A shallow aquifer lies beneath the West Lake Landfill and surrounding neighborhoods.

67. Originally used for agriculture, the land became a limestone quarrying and crushing operation in 1939.

68. Beginning in the early 1950s, portions of the quarried areas and adjacent areas were used to dispose of municipal refuse, chemical wastes, industrial solid wastes, and construction/demolition debris.

69. The Landfill was never designed to be an adequate storage or disposal site for radioactive materials, nor was it ever licensed by the State of Missouri as such. Despite the Landfill not being properly designed to receive radioactive materials, the Defendants accepted hazardous, toxic, carcinogenic, radioactive wastes and spread them around the Landfill.

70. The inadequacies of the Landfill itself are described in the scientific literature as follows:

Although the West Lake Landfill contains significant amounts of long-lived radiotoxic wastes such as those contained in federally

⁸ Criss (2013) at 1.

licensed commercial radioactive waste Landfills, it meets virtually none of legal requirements governing shallow radioactive waste disposal to prevent off-site migration.⁹

71. The data collected on and around the Landfill documents radioactive contamination of soil, water, and air.

Onsite ²²⁶Ra concentrations in soils as high as 21,000 pCi/g were measured, compared to estimated background levels of 2 pCi/g. Elevated radium contents above the EPA's MCL of 5 pCi/l are also widespread in both the alluvial and bedrock aquifer within about 1500 feet of Areas 1 and Area 2. Airborne surveys established that external radiation levels exceeding 100µR/hr, while distal samples were <10 µR/hr. Levels recorded one meter above Area 2 were as high as 3-4 mR/hr, or as much as 400x higher than background. NRC reports that the subsequent addition of soil cover and construction debris to Areas 1 and 2 diminished these levels several fold.¹⁰

72. Other toxic and hazardous materials are expected to have been released via the air pathway, in addition to the radioactive materials. This phenomenon contributes to the damages complained of herein.

73. The Landfill stopped accepting waste on December 31, 2004 and is now used as a transfer station for municipal wastes.

74. The Landfill waste mass encompasses approximately 52 acres with approximately 240 feet below the ground's surface and a total waste thickness of 320 feet.

⁹ Kaltofen (2016) at 104.

¹⁰ Criss (2013) at 2 (citations omitted)

Radioactive Waste at the West Lake Landfill

75. Defendants caused or contributed to improper handling, storage, and disposal of an estimated 500,000 cubic yards of radioactive wastes in the Landfill. As a result, about 15 acres of the West Lake Landfill are filled with radioactive waste at depths up to 20 feet.

76. Upon information and belief, Defendants who operated the Landfill used the radioactive waste mixed with radioactive soil as daily cover in its Landfill operations thereby spreading the waste throughout the Landfill.

77. Defendants did not take necessary safety precautions when disposing of and handling the radioactive wastes and radioactive soil to prevent off-site contamination.

78. The staff of the Landfills were neither qualified, nor trained to handle or dispose of radioactive wastes in a safe manner.

79. The Landfill was not intended, nor designed to contain radioactive wastes. In reality, the Landfill is a chaotic pile of debris covered by unmanaged “natural vegetation, surrounded by a fence with radioactive [warning] signs.” Given the significant design and operational deficiencies, experts contend that the West Lake Landfill is even unsuitable for ordinary domestic waste.¹¹

The Fire

80. The Landfill has experienced problems with subsurface fires throughout its operational history. Despite having past experiences with subsurface fires, sufficient

¹¹ Criss (2013) at 4.

precautionary measures were not implemented to prevent future fires or to protect the radiologically contaminated areas from being affected.

81. Upon information and belief, Defendants discovered high temperatures in several monitoring wells. Upon information and belief, Defendants continued with aggressive gas extraction methods exacerbating the underground fire and enabling it to spread uncontrolled. Defendants finally reported to authorities that the Landfill was experiencing high temperatures on extraction wells evidencing a subsurface smoldering event.

82. Since then, the smoldering has intensified into a spreading subsurface fire evidenced by surface soil settlement, increased odors, elevated hydrogen levels, and high temperatures. High temperatures and smoke caused by the fire could mobilize radionuclides into the air and ultimately into soil, surface water, ground water.

83. Due to the fact that the radioactive material was used as daily cover around the landfill, it is more likely than not that some fire has already consumed radioactive material. However, if the subsurface fire reaches the radioactively impacted portions of the Landfill, the hot gases from the fire will likely cause fissures in the overburden material. These fissures may allow additional quantities of radioactive radon gas to escape the Landfill and become deposited as lead-210 onto properties in the class boundary as it decays.

84. A subsurface fire in the radioactively contaminated areas would be expected to create increased pressure conditions within the Landfill and force out entrained radioactive gases, including radon which is extremely toxic to breathe. A subsurface fire may be present in the radioactively contaminated areas for a long period of time before it is detected, because the only

apparent means to detect a subsurface smoldering event after closure is through annual visual inspections.

85. Another effect of a subsurface fire or smoldering event would be increased leachate production which has been observed in the Bridgeton Landfill from condensation of large amounts of steam.

86. The literature describes the risk of the West Lake underground fire as follows:

An underground fire is currently ongoing in the municipal Landfill (OU-2) that is immediately south of Area 1 of OU-1. Such fires can burn for years, creating high underground temperatures, and releasing carbon monoxide, dioxins, VOCs and other noxious chemicals, and particulates into air. Numerous people who reside near the Landfill complained about odor and health problems at the January 17, 2013 public meeting in Bridgeton. Risks for adjacent, radionuclide-bearing OU-1 include but are not restricted to the following 1) fire can spread from OU-2 into OU-1, particularly because demolition and construction Landfills are known to have much higher risk than municipal Landfills; 2) subterranean fires can result in Landfills collapse, landslides and slumping, endangering personnel and exposing dangerous materials to the surface; 3) Landfill fires have high explosion risk because of methane, gas cylinders, and drums; 4) high temperatures and smoke could mobilize radionuclides into surface water, ground water and air.¹²

87. There are at least two human exposure risk pathways that would exist from a subsurface smoldering event or subsurface fire reaching the radioactive materials. The first is the risk of people being subjected to increased air exposures to contaminants such as breathing in radon gas, radon-226. As airborne concentrations of radon gas increase, so would the risk to the neighboring population of breathing in radon gas and developing injuries such as lung cancers. Additionally, as radon gas decays it will become deposited onto people's property and in their

¹² Criss (2013) at 4-5 (citations omitted).

homes as radioactive lead-210 and polonium-210 which would subject people to increased risk of internal exposure to radioactive materials. The second pathway is increased leachate production that could further move contaminants and radioactive materials into the groundwater.

88. Despite these risks, the Defendants have allowed the subsurface fire to spread uncontrolled.

89. From the start of the subsurface smoldering event and throughout the subsequent fire, Plaintiffs have regularly encountered noxious, putrid, and offensive odors on his property coming from the Landfill, which diminishes quality of life and results in lost property value.

The Spread of Defendants' Radioactive Waste to Off-Site Businesses and Homes

90. As stated herein, Defendants have violated numerous standards for protection against radiation promulgated by the state of Missouri. Defendants' negligent handling, storage, and disposal of radioactive wastes and radioactive soil as daily cover caused dangerous contaminants to be deposited in several areas throughout the Landfill site and to be highly susceptible to off-site migration of radioactive materials including radon gas, radioactive particles, and radioactively-contaminated groundwater.

91. An example of water impacts of the Landfill will put this in perspective. Every day, the Landfill generates about 150,000 gallons of contaminated hazardous liquid waste. In a doomed attempt to capture that waste, the Landfill Defendants installed a leachate collection system. But the leachate collection system itself was inadequate and has resulted in spills, releases, and leaks that have contributed to the groundwater and surface water contamination in the area.

92. Radiological and organic contamination was also detected in trees adjacent to and off-site from the Landfill in the vicinity of the North West Auto Body Property. The presence of

radioactive contamination in the trees resulted from the uptake of off-site contamination from the Landfill.

93. Recent studies of the Landfill area document radioactive radon gas emissions from the Landfill are falling out and contaminating soil. Kaltofen reported the following:

Levels of ^{210}Pb in key samples were well above background activities, and were significantly out of secular equilibrium with other members of the uranium decay chain. This is strong evidence that the ^{210}Pb originated by decay of short-lived, fugitive radon gas that escaped the Landfill.¹³

94. Importantly, wherever lead-210 occurs, it will decay to polonium-210, creating an additional dose, as a matter of the laws of physics.

95. In addition, recent studies of surface water runoff from the Landfill, particularly after heavy rains, document radioactive contaminated surface water runoff to off-site properties.¹⁴

96. Critical to the legacy of radioactive particles contaminating the homes and communities surrounding the Landfill is that:

- A. The radioactive contamination has gone *off-site*, and
- B. The off-site radioactive contamination has the *fingerprint* (or profile) of the hazardous, toxic, carcinogenic radioactive wastes generated from the processing of uranium ore in downtown St. Louis which was subsequently stored at SLAPS and Latty Avenue before being disposed of in the Landfill.

¹³ Kaltofen (2016) at 110.

¹⁴ EPA Finds Radiation in West Lake Landfill Runoff, *CBS St. Louis*, May 26, 2016, <http://stlouis.cbslocal.com/2016/05/26/epa-finds-radiation-inwestlake-landfill-runoff>.

97. Defendants have a long and consistent history of consciously disregarding the regulations for the control of radiation in Missouri by:

- A. failing to make such surveys as are reasonably necessary to comply with the regulations;
- B. failing to post adequate warning signs as required by the regulations;
- C. failing to obtain a specific license for the handling of radioactive materials and wastes;
- D. failing to adequately monitor or control its offsite effluent by air and water;
- E. failing to provide dosimetry to workers and more than occasional visits by members of the general public to the site;
- F. failing to have an adequate or proper radiation protection program for its workers, despite knowledge of the significant potential for those workers to be exposed to material emitting gamma, beta, alpha radiation;
- G. allowing off-site migration of the radioactive materials, resulting in a release to an unrestricted area;
- H. allowing excessive radon emanation from the landfill;
- I. allowing unmonitored offsite migration of contaminated surface waters without a specific license,
- J. failing to maintain adequate waste exposure records and reports;
- K. failing retain and employ qualified radiation protection experts;
- L. failing to supply former workers with a summary of their radiation dose;

- M. failing to see that all work with radioactive materials is carried under conditions which will minimize the possibility of spread of radioactive materials;
 - N. failing to monitor the workplace and prevent worker or visitors' clothing from becoming contaminated with radioactive materials;
 - O. failing to require third parties who were disposing of radioactive material at the site to obtain a specific license;
 - P. allowing the disposal of radioactive waste materials by dumping or burial at a site not approved by the Department of Health;
 - Q. failing to have an accurate accounting for all radioactive materials at the site; and
 - R. failed to have records which show the amount of radioactive material received, transferred, decayed in storage, disposed of, and other information as may be necessary to account for the difference between the amount of radioactive material received or produced and the amount on hand.
98. Defendants essentially violated every Missouri regulation related to radiation exposure.
99. Due to risk of gamma radiation exposure, EPA has directed Republic to cover portions of the landfill with six inches of fill to protect workers and innocent members of the general public who will be exposed to gamma radiation if they are in that area. To date, this recommendation has not been implemented.
100. This zone of excessive gamma radiation was identified in 1978 during a surveillance flight by the NRC. Despite being informed of this zone of excessive gamma radiation, Defendants did nothing.

101. To this day, Defendants, despite orders from the EPA, continued to disregard the presence of radioactive materials at the landfill, including by failing to protect workers and visitors from radiation, including at the transfer station.

102. The only time Defendants takes any action to remediate or protect workers or the public from radioactive wastes is when ordered to do so by governmental body.

Concealment of Facts Related to Risk

103. Republic and other Defendants through their silence have reassured government officials, the public and Plaintiffs that the Landfill has not contaminated nearby properties. In particular, Republic and its representatives, as well as its professional public relations firm(s), have made misrepresentations that were meant to assure Plaintiffs that:

- A. Any suspicion of off-site contamination from the Landfill are merely rumors “being spread by alarmists.”¹⁵
- B. Its activities “should reassure the community that they are safe from and not being exposed to any risk from groundwater beneath West Lake Landfill.”¹⁶
- C. The Landfill’s neighbors, including the Plaintiffs “can rest assured that they are safe.”¹⁷

¹⁵ Jacob Barker, Radium above federal guidelines in groundwater near West Lake at 2, *St. Louis Today*, Dec. 17, 2014.

¹⁶ *Id.*

¹⁷ Jacob Barker, Frustration with EPA handling of West Lake growing at 5, *St. Louis Today*, Jan. 3, 2015.

D. The fire and Landfill are both at a “managed state.”¹⁸

E. The waste at the Landfill presents no danger to public health.¹⁹

Defendants’ Radioactive Particles Contaminated the Plaintiffs’ Property

104. The North West Auto Body Property is contaminated by radioactive material.

105. Samples taken on and around the North West Auto Body Property confirm an elevated presence of radioactive particles.

106. The North West Auto Body Property neighbors the Landfill. This proximity puts the North West Auto Body Property in the direct path of radioactive air emissions, radioactive particles distributed by the wind blowing such contamination off the site in dirt and dust, Radon gas, and frequent offensive odors; all of which emanate from the Landfill.

107. The Kaltofen (2016) published scientific paper identified “strong evidence of short lived fugitive radon gas that escaped from the landfill.”²⁰ These air emissions fall out to soil and dust as ²¹⁰Pb, a highly radioactive isotope.

108. It is also clear that radioactive material will be distributed from the Landfill “by surface water and winds.”²¹ The surface water runoff threat is heightened during periods of high rainfall and flooding, and has been documented.²²

109. Frequent offensive odors from the Landfill are experienced by Plaintiff.

¹⁸ *Frustration with EPA handling of West Lake growing*, Jacob Barker, St. Louis Today, January 3, 2015 at p. 5.

¹⁹ *Id.*

²⁰ Kaltofen (2016) at 111.

²¹ Kaltofen (2016) at 104.

²² EPA Finds Radiation in West Lake Landfill Runoff, *CBS St. Louis*, May 26, 2016, <http://stlouis.cbslocal.com/2016/05/26/epa-finds-radiation-inwestlake-landfill-runoff>.

110. The radioactive wastes, which are hazardous, toxic, carcinogenic, that have polluted the North West Auto Body Property and continue to threaten to further pollute the North West Auto Body Property match waste fingerprint (or profile) of the hazardous, toxic, carcinogenic radioactive wastes dumped in the Landfill.

111. This radioactive contamination on Plaintiffs' property migrated from the Landfill. The contamination was caused by the Defendants' improper handling, storage, and disposal of radioactive materials.

112. Radioactive contamination of the North West Auto Body Property and frequent offensive odors render the North West Auto Body Property unfit for normal use and enjoyment, and destroys its fair market value.

113. As a direct and proximate result of Defendants' conduct, Plaintiffs and the Class are currently being subjected to radioactive waste contamination and will suffer irreparable harm if an injunction is not granted requiring Defendants conduct a total and complete cleanup of the contamination and to prevent and eliminate further contamination.

COUNT I – TRESPASS
(brought individually and on behalf of the Property Damage Subclass)

114. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

115. Plaintiff John C. Kitchin, Jr. owns and controls the North West Auto Body Property located at 12990 St. Charles Rock Road, more particularly described above.

116. Defendants own and control property located at the Bridgeton and West Lake Landfills, which adjoins Plaintiffs' property.

117. Defendants store and/or transport radioactive materials and other toxic and hazardous wastes on their property.

118. Defendants have used these radioactive materials in a manner that is unreasonable, unlawful, malicious, and wanton, resulting in an invasion of Plaintiffs' property.

119. Defendants have caused these radioactive materials to migrate from Defendants' property and contaminate Plaintiffs' property.

120. Defendants willfully, wantonly, and maliciously caused the emission of Radon gas, and radioactive particles onto and around Plaintiffs' property through their Landfill operations.

121. It was reasonably foreseeable that Defendants' actions would and will continue to contaminate Plaintiffs' property with radioactive particles and other hazardous wastes.

122. The migration of Radon gas and radioactive particles from Defendants' property onto Plaintiffs' property has resulted and continues to result in direct physical interference with Plaintiffs' property. Such contamination is incompatible with the normal use and enjoyment of Plaintiffs' Property.

123. Plaintiffs did not give Defendants permission or consent to interfere with his property in this manner. Through Defendants' actions and inactions, they are illegally and improperly using Plaintiffs' property to store hazardous, toxic, carcinogenic, radioactive wastes.

124. The contamination of Plaintiffs' property with Radon gas and radioactive particles, and other hazardous wastes, has resulted in significant damage to the property.

125. As a direct and proximate cause of this continuing and recurring physical interference, Plaintiffs have suffered and continue to suffer injury, including decreased property value.

COUNT II – PERMANENT NUISANCE
(brought individually and on behalf of the Property Damage Subclass)

126. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

127. Plaintiffs John C. Kitchin, Jr. owns and controls the North West Auto Body Property, more particularly described above.

128. Landfill Defendants own and control property located at the Bridgeton and West Lake Landfills, which adjoins Plaintiffs' property.

129. Defendants unreasonably and unlawfully stored and used radioactive materials at the Landfill, which adjoins Plaintiffs' property.

130. The Defendants caused and contributed to the radioactive contamination of Plaintiffs' property.

131. The Landfill and the radioactive waste that the Landfill contains are a permanent construction that is necessarily injurious to Plaintiffs as installed. It is not practical or possible to abate the presence of the Landfill or the radioactive waste stored there.

132. Operating an unlicensed radioactive hazardous waste dump in a populated area is a nuisance *per se*.

133. Defendants have intentionally, unreasonably, negligently, recklessly, willfully, wantonly and maliciously allowed the emission of Radon gas and radioactive particles onto and around Plaintiffs' property, resulting in unreasonable interference with Plaintiffs' use and enjoyment of their property. Such contamination is incompatible with the normal use and enjoyment of the North West Auto Body Property.

134. Defendants' interference with Plaintiffs' use and enjoyment of the property is substantial.

135. Defendants have intentionally, unreasonably, negligently, recklessly, willfully, wantonly and maliciously allowed the emission of noxious, offensive odors and various hazardous substances into the surrounding air resulting in unreasonable interference with Plaintiffs' use and enjoyment of the property.

136. Defendants' continuous and unrelenting noxious odors invading Plaintiffs' property causes inconvenience to Plaintiffs and prevents them from using the property.

137. As a direct and proximate result of Defendants' interference with Plaintiffs' use and enjoyment of the property, Plaintiffs have suffered permanent injury, including decreased property value.

**COUNT III – TEMPORARY NUISANCE
(brought individually and on behalf of the Property Damage Subclass)**

138. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

139. Plaintiff John C. Kitchin, Jr. owns and controls the North West Auto Body Property, more particularly described above.

140. Defendants own and control property located at the Bridgeton and West Lake Landfills, which adjoins Plaintiffs' property.

141. Defendants unreasonably and unlawfully store and use radioactive materials at the Landfill, which adjoins Plaintiffs' property.

142. The Defendants caused and contributed to the radioactive contamination of Plaintiffs' property.

143. The Defendants intentionally, unreasonably, negligently, recklessly, willfully, wantonly and maliciously allow the emission of Radon gas and radioactive particles onto and around Plaintiffs' property, resulting in unreasonable interference with Plaintiffs' use and enjoyment of their property. Such contamination is incompatible with the normal use and enjoyment of the North West Auto Body Property.

144. Defendants' interference with Plaintiffs' use and enjoyment of the property is substantial.

145. Defendants intentionally, unreasonably, negligently, recklessly, willfully, wantonly and maliciously allow the emission of noxious, offensive odors and various hazardous substances into the surrounding air resulting in unreasonable interference with Plaintiffs' use and enjoyment of their property.

146. Defendants' use of the Landfill causes frequent and unrelenting noxious odors to invade Plaintiffs' property and prevents Plaintiffs from using their property.

147. As a direct and proximate result of Defendants' interference with Plaintiffs' use and enjoyment of the property, Plaintiffs have suffered and continue to suffer injury, including decreased property value.

COUNT IV – NEGLIGENCE
(brought individually and on behalf of the Property Damage Subclass)

148. Plaintiffs re-allege and incorporate by reference every allegation of this Complaint as if each were set forth fully herein.

149. Radioactive isotopes are known human carcinogens and are among the most toxic materials known to man. When property becomes contaminated with these wastes, the dangers can persist in the environment for thousands of years. Radioactive wastes should be handled, stored, and disposed of with the utmost safety in mind. Exposures to radioactive wastes should be as low as is reasonably achievable.

150. Knowing of the grave dangers posed by these wastes, the Defendants owed a duty of care to the Plaintiffs and the public to ensure the safe and legal handling, storage, and disposal of the radioactive wastes in order to prevent significant injury to property and persons.

151. Defendants were negligent in accepting hazardous, toxic, carcinogenic radioactive wastes at a landfill located in a residential area that was not capable of safely and properly disposing of radioactive materials. The Landfill was not properly licensed, nor configured, nor staffed to handle the disposal of radioactive wastes. Upon information and belief Defendants used the radioactive materials which were mixed with contaminated soil as daily cover.

152. The Defendants owed a duty to the Plaintiffs to operate the Landfill in a safe, legal, and reasonable manner so as not to contaminate and interfere with surrounding properties. The Defendants owed a duty not to accept radioactive wastes for which they were not licensed or qualified to handle. After accepting radioactive wastes, the Defendants had a duty to safely handle, store and/or dispose of the radioactive wastes in order to prevent significant injury to property and persons.

153. Defendants were negligent in the construction, design, operating and maintenance of the Landfill.

154. Defendants negligently accepted hazardous, toxic, carcinogenic radioactive wastes when the Landfill was not designed, nor staffed to handle the disposal of radioactive wastes. The negligent design and maintenance of the Landfill by Defendants failed to prevent the release of Radon gas and radioactive particles and hazardous and toxic wastes onto surrounding properties in excess of guidelines.

155. Upon information and belief, Defendants' negligent training of personnel handling radioactive, toxic, and hazardous materials on site was a direct and proximate cause of damage to Plaintiffs' property.

156. Defendants' negligent use of radioactive wastes mixed with radioactive soil as daily cover spread contamination into a broader area and prevented Defendants and regulators from knowing the location of these dangerous wastes. The negligent use of radioactive materials as daily cover in an unlined Landfill resulted in contamination of the groundwater underlying the Landfill and surrounding properties.

157. Defendants were negligent in failing to prevent the subsurface fire. Defendants should have implemented adequate practices with respect to gas extraction to avoid subsurface fires after they initially dealt with problems with smoldering events and increased subsurface temperatures in the 1990's. The subsurface fire along with the resulting noxious odors and increased risk of significant Radon gas emissions are a direct and proximate result of the Defendants' negligence in the operation of the Landfill. Such contamination is incompatible with the normal use and enjoyment of the Plaintiffs' Property.

158. Defendants' negligence throughout the history of the mishandling and improper dumping of radioactive wastes in the Landfill has resulted in repeated releases of Radon gas and

radioactive particles and other hazardous materials as well as offensive odors onto Plaintiffs' property, in disregard of applicable regulations and property rights.

159. Defendants' negligence has damaged Plaintiffs' property by contaminating it with radioactive particles, toxic and other hazardous substances and noxious odors. Defendant's negligence diminished Plaintiffs' property value.

160. The injuries sustained by Plaintiffs are of the kind that do not occur without negligence.

161. Plaintiffs' injuries were the result of wastes generated, disposed of, and controlled by Defendants.

162. Plaintiffs did not consent to the injuries, nor did they contribute to the injuries in any way.

**COUNT V – NEGLIGENCE PER SE
(brought individually and on behalf of the Property Damage Subclass)**

163. Plaintiffs re-allege and incorporate by reference every allegation of this Complaint as if each were set forth fully herein.

164. Defendants violated Missouri regulations for Protection against Ionizing Radiation, 19 C.S.R. 20-10.070, 20-10.090, Missouri Solid Waste Management Law and Regulations, 10 C.S.R. 80-2.020(1)(F), 80-3.010(3)(A)(2), 80-3.010(3)(B)(1), 80-3.010(8)(A), 80-3.010(9)(C)(2), 80-3.010(13)(C), 80-3.010(14)(C), 80-3.010(19)(A), 10 CSR 80-3.010(19)(C)(7); Mo. Rev. Stat. §§ 260.210.1(4), 260.380(1); Missouri Clean Water Act, Mo. Rev. State. § 644.051.1, and Missouri Air Conservation regulations, 10 C.S.R. 10-6.165, all of which require

the safe storage and disposal of radioactive material so as to protect the health and safety of the public.

165. Plaintiffs are members of the class of persons that the Missouri regulations for Protection against Ionizing Radiation, Missouri Solid Waste Management Law and Regulations, and Missouri Air Conservation regulations were intended to protect

166. The contamination of Plaintiffs' land is the kind of injury that the Missouri regulations for Protection against Ionizing Radiation, Missouri Solid Waste Management Law and Regulations, Missouri Hazardous Waste Management Law, and Missouri Air Conservation regulations were designed to prevent.

167. Defendants' violations of Missouri regulations for Protection against Ionizing Radiation, Missouri Solid Waste Management Law and Regulations, and Missouri Air Conservation regulations were the proximate cause of Plaintiffs' injuries.

168. Defendants' negligence throughout the history of the mishandling and improper dumping hazardous, toxic, carcinogenic, radioactive wastes in the Landfill area has resulted in repeated releases of Radon gas and radioactive particles and other hazardous materials as well as offensive odors onto Plaintiffs' property in violation of applicable regulations and disregard for property rights.

169. Defendants' negligence has damaged Plaintiffs' property by contaminating it with radioactive particles, toxic and other hazardous substances and noxious odors. Defendant's negligence diminished Plaintiffs' property value.

170. Plaintiffs did not consent to the injuries, nor did they contribute to the injuries in any way.

**COUNT VI - STRICT LIABILITY/ABSOLUTE LIABILITY
(brought individually and on behalf of the Property Damage Subclass)**

171. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

172. Defendants engaged in the abnormally dangerous activity of handling, storing, and/or disposing of radioactive waste.

173. By handling, storing, and/or disposing of radioactive waste, Defendants have created and continue to create a high degree of risk of harm to Plaintiffs' property.

174. Defendants have intentionally failed to eliminate the risk of harm caused by their handling, storing, and/or disposing of radioactive waste.

175. As a direct result of Defendants' abnormally dangerous activities, Plaintiffs' property was contaminated with radioactive materials and they suffered and continue to suffer injury, including diminished property value. Such contamination is incompatible with the normal use and enjoyment of Plaintiffs' Property.

176. Plaintiffs' injuries are of the kinds that result from the dangerous nature of handling, storing, and/or disposing of radioactive waste.

177. The injuries that Defendants' handling, storing, and/or disposing of radioactive waste have caused Plaintiffs to suffer, drastically outweigh the value of the Landfill.

178. Accordingly, Defendants are jointly and severally liable for any and all damages Plaintiffs have sustained as a result of their strict liability for handling, storing and/or disposing of radioactive materials, including, without limitation, any incidental or consequential damages.

**COUNT VII – INJUNCTIVE RELIEF
(brought individually and on behalf of the Class)**

179. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

180. Defendants have tortiously contaminated Plaintiffs' property with hazardous, toxic, carcinogenic, radioactive wastes.

181. The Defendants' tortious acts threaten the safety and normal use and enjoyment of the Plaintiffs' property.

182. The radioactive contamination of Plaintiffs' property has caused a significant increased risk to Plaintiffs, and therefore Plaintiffs are in need of a thorough scientific evaluation of the radioactive contaminant levels throughout the Property.

183. The need for such an evaluation is a direct consequence of the Defendants' tortious conduct, and does not arise from the innocent conduct of the homeowners.

184. Therefore, Plaintiffs seek injunctive and equitable relief to require the Defendants to conduct the necessary scientific evaluation their property, consistent with contemporary scientific principles. Plaintiffs seek injunctive and equitable relief to require the Defendants to respond to the consequences of this tortious contamination by providing the necessary medical monitoring in the form of environmental testing, clean-up, and medical tests as indicated by the results of the scientific evaluation.

185. Plaintiffs seek this injunctive and equitable relief either in the form of an injunction requiring the Defendants to conduct the necessary monitoring themselves, or in the form of a court-

ordered and court-supervised fund (with a court-appointed trustee if the court deems that appropriate) to provide for the necessary monitoring.

186. Such injunctive and equitable relief will decrease the radioactive contamination risks of the North West Auto Body Property, decrease the interference with the use and enjoyment of said property, and further mitigate Plaintiffs' damages.

**COUNT VIII – CIVIL CONSPIRACY
(brought individually and on behalf of the Class)**

187. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

188. Defendants committed one or more of the willful, wanton, malicious, reckless, and outrageous acts more fully set forth above which individually or cumulatively justify the award of punitive damages in this matter.

189. Defendants knew or had information from which, in the exercise of ordinary care, should have known that such conduct, as detailed above, created a high degree of probability of injury to Plaintiffs and others similarly situated.

190. The willful, wanton, malicious, reckless, and outrageous acts of Defendants, as detailed above, evidence Defendants' complete indifference to and/or conscious disregard for the safety of Plaintiffs, and others similarly situated.

**COUNT IX – PUNITIVE DAMAGES
(brought individually and on behalf of the Class)**

191. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

192. Defendants committed one or more of the willful, wanton, malicious, reckless, and outrageous acts more fully set forth above which individually or cumulatively justify the award of punitive damages in this matter.

193. Defendants knew or had information from which, in the exercise of ordinary care, should have known that such conduct, as detailed above, created a high degree of probability of injury to Plaintiffs and others similarly situated.

194. The willful, wanton, malicious, reckless, and outrageous acts of Defendants, as detailed above, evidence Defendants' complete indifference to and/or conscious disregard for the safety of Plaintiffs, and others similarly situated.

PRAYER FOR RELIEF

WHEREFORE, as to each Count, and all Counts, Plaintiffs pray for judgment in favor of Plaintiffs and Class and against Defendants Bridgeton Landfill, LLC, Republic Services, Inc., Allied Services, L.L.C., and Rock Road Industries, Inc., as well as awarding the following to Plaintiffs and against Defendants:

- a. an award of actual, general, special, incidental, statutory, compensatory and consequential damages in an amount to be proven at trial, including compensatory damages for the loss and use of enjoyment of Plaintiffs' property; annoyance and discomfort; damage to Plaintiffs' personal property; the diminution in the market value of Plaintiffs' property; as well as the costs and expenses incurred as a result of Plaintiffs' exposure to radioactive emissions, including costs of remediation and relocation;
- b. an award of double damages for malicious trespass as provided for under Mo. Rev.

Stat. § 537.330;

- c. an award of punitive and exemplary damages as fair and reasonable in an amount sufficient to punish Defendants and to deter similar conduct in the future;
- d. costs and attorney fees;
- e. interest on the above amounts as allowed by law, including but not limited to pre- and post-judgement interest;
- f. for appropriate injunctive and equitable relief, permitted by law or equity including a preliminary and/or permanent injunction enjoining Defendants from continuing the unlawful conduct as set forth herein and directing Defendants to identify, with Court supervision, members of the Class in order to compensate them and to clean up all contamination, and including medical monitoring; and
- g. for any further relief this Court deems just and proper.

Respectfully submitted,

KEANE LAW LLC

/s/ Ryan Keane

Ryan A. Keane, # 62112
Alex Braitberg, # 67045
7777 Bonhomme Ave., Ste. 1600
St. Louis, MO 63105
Phone: (314) 391-4700
Fax: (314) 244-3778
ryan@keanelawllc.com
alex@keanelawllc.com

JOHNSON GRAY, LLC
Anthony D. Gray, # 51534
319 North 4th Street, Suite 212
St. Louis, MO 63102
Phone: (314) 385-9500
agray@johnsongraylaw.com

COOPER LAW FIRM, L.L.C.
Barry J. Cooper, Jr., TX Bar # 24057527 *pro hac vice*
forthcoming
Celeste Brustowicz, LA Bar # 16835 *pro hac vice*
forthcoming
508 St. Philip Street
New Orleans, LA 70116
Phone: (504) 566-1558
bcooper@sch-llc.com
cbrustowicz@sch-llc.com

and

RON AUSTIN & ASSOCIATES, L.L.C.
Ron A. Austin. LA Bar # 23630, *pro hac vice*
forthcoming
920 4th Street
Gretna, Louisiana 70053
Phone: (504) 227-8100
Fax: (504) 227-8122
raustin@austin-associates.net

Attorneys for Plaintiffs and proposed Class

**TWENTY-FIRST JUDICIAL CIRCUIT OF THE STATE OF MISSOURI
ST. LOUIS COUNTY**

JOHN C. KITCHIN, JR., and NORTH)
WEST AUTO BODY COMPANY, on behalf)
of themselves and all others similarly situated,)

Plaintiffs,)

vs.)

BRIDGETON LANDFILL, LLC,)
REPUBLIC SERVICES, INC.,)
ALLIED SERVICES, LLC, and)
ROCK ROAD INDUSTRIES, INC.,)

Defendants.)

Case No. 18SL-CC00613

Division No. 2

ENTRY OF APPEARANCE

COMES NOW attorney Alex Braitberg and hereby enters his appearance on behalf of
Plaintiffs and all others similarly situated.

Dated: February 27, 2018

Respectfully submitted,

KEANE LAW LLC

/s/ Alex Braitberg

Alex Braitberg, # 67045
7777 Bonhomme Ave., Ste. 1600
St. Louis, MO 63105
Phone: (314) 391-4700
Fax: (314) 244-3778
alex@keanelawllc.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 27, 2018, a true and accurate copy of the foregoing was served by filing it in the court's electronic filing system.

/s/ Alex Braitberg

In the
CIRCUIT COURT
Of St. Louis County, Missouri



For File Stamp Only

John Kitchin et al.
Plaintiff/Petitioner

February 27, 2018
Date

vs.

Bridgeton Landfill, LLC, et al.
Defendant/Respondent

18SL-CC00613
Case Number

2
Division

REQUEST FOR APPOINTMENT OF PROCESS SERVER

Comes now Plaintiff, pursuant to Local Rule 28, and at his/her/its own risk requests the appointment of the Circuit Clerk of

Richard Acree, Nationwide Legal Services, LLC, 3150 North 24th Street #D104 Phoenix, AZ 85016 (602) 256-9700
Name of Process Server Address Telephone

Name of Process Server Address or in the Alternative Telephone

Name of Process Server Address or in the Alternative Telephone

Natural person(s) of lawful age to serve the summons and petition in this cause on the below named parties. This appointment as special process server does not include the authorization to carry a concealed weapon in the performance thereof.

SERVE:
Republic Services, Inc. c/o CT Corporation System
Name
3800 N. Central Ave. Suite 460
Address
Phoenix, AZ 85012
City/State/Zip

SERVE:

Name

Address

City/State/Zip

SERVE:

Name

Address

City/State/Zip

SERVE:

Name

Address

City/State/Zip

Appointed as requested:
JOAN M. GILMER, Circuit Clerk

By /s/Joaquinta Jones
Deputy Clerk

3-19-2018
Date

/s/ Alex Braitberg
Signature of Attorney/Plaintiff/Petitioner
67045
Bar No.
7777 Bonhomme Ave., Ste 1600, Clayton, MO 63105
Address
(314) 391-4700
Phone No. Fax No.

Local Rule 28. SPECIAL PROCESS SERVERS

(1) Any Judge may appoint a Special Process Server in writing in accordance with the law and at the risk and expense of the requesting party except no special process server shall be appointed to serve a garnishment [except as allowed by Missouri Supreme Court Rule 90.03(a)].

This appointment as Special Process Server does not include the authorization to carry a concealed weapon in the performance thereof.

(2) The Circuit Clerk may appoint a natural person other than the Sheriff to serve process in any cause in accordance with this subsection;

(A) Appointments may list more than one server as alternates.

(B) The appointment of a person other than the Sheriff to serve process shall be made at the risk and expense of the requesting party.

(C) Any person of lawful age, other than the Sheriff, appointed to serve process shall be a natural person and not a corporation or other business association.

(D) No person, other than the Sheriff, shall be appointed to serve any order, writ or other process which requires any levy, seizure, sequestration, garnishment, [except as allowed by Missouri Supreme Court Rule 90.03(a)], or other taking.

(E) Requests for appointment of a person other than the Sheriff to serve process shall be made on a "Request for Appointment of Process Server" electronic form, which may be found on the Court's Web Site, <http://www.stlouisco.com>. (LawandPublicSafety/Circuit/Forms).

(F) This appointment as Special Process Server does not include the authorization to carry a concealed weapon in the performance thereof.

SERVICE RETURN

Any service by the St. Louis County Sheriff's Office shall be scanned into the courts case management system. Any service by another Sheriff or a Special Process Server or any other person authorized to serve process shall return to the attorney or party who sought service and the attorney shall file the return electronically to the Circuit Clerk.

In the
CIRCUIT COURT
Of St. Louis County, Missouri



For File Stamp Only

John Kitchin et al.
Plaintiff/Petitioner

February 27, 2018
Date

vs.

Bridgeton Landfill, LLC, et al.
Defendant/Respondent

18SL-CC00613
Case Number

2
Division

REQUEST FOR APPOINTMENT OF PROCESS SERVER

Comes now Plaintiff, pursuant

Requesting Party

to Local Rule 28, and at his/her/its own risk requests the appointment of the Circuit Clerk of

Jose Pineiro, Missouri Process Serving 1430 Washington Ave., Suite 220, St. Louis, MO 63103 314-825-5512
Name of Process Server Address Telephone

Name of Process Server Address or in the Alternative Telephone

Name of Process Server Address or in the Alternative Telephone

Natural person(s) of lawful age to serve the summons and petition in this cause on the below named parties. This appointment as special process server does not include the authorization to carry a concealed weapon in the performance thereof.

SERVE:

Bridgeton Landfill LLC c/o The Corporation Company
Name
120 South Central Ave.
Address
Clayton, MO 63105
City/State/Zip

SERVE:

Allied Services, LLC c/o The Corporation Company
Name
120 South Central Ave.
Address
Clayton, MO 63105
City/State/Zip

SERVE:

Rock Road Industries, Inc.c/o CT Corporation System
Name
120 South Central Ave.
Address
Clayton, MO 63105
City/State/Zip

SERVE:

Name

Address

City/State/Zip

Appointed as requested:

JOAN M. GILMER, Circuit Clerk

/s/ Alex Braitberg

Signature of Attorney/Plaintiff/Petitioner

67045

Bar No.

7777 Bonhomme Ave., Ste 1600, Clayton, MO 63105
Address

(314) 391-4700

Phone No.

Fax No.

By _____
Deputy Clerk

Date

Local Rule 28. SPECIAL PROCESS SERVERS

(1) Any Judge may appoint a Special Process Server in writing in accordance with the law and at the risk and expense of the requesting party except no special process server shall be appointed to serve a garnishment [except as allowed by Missouri Supreme Court Rule 90.03(a)].

This appointment as Special Process Server does not include the authorization to carry a concealed weapon in the performance thereof.

(2) The Circuit Clerk may appoint a natural person other than the Sheriff to serve process in any cause in accordance with this subsection;

(A) Appointments may list more than one server as alternates.

(B) The appointment of a person other than the Sheriff to serve process shall be made at the risk and expense of the requesting party.

(C) Any person of lawful age, other than the Sheriff, appointed to serve process shall be a natural person and not a corporation or other business association.

(D) No person, other than the Sheriff, shall be appointed to serve any order, writ or other process which requires any levy, seizure, sequestration, garnishment, [except as allowed by Missouri Supreme Court Rule 90.03(a)], or other taking.

(E) Requests for appointment of a person other than the Sheriff to serve process shall be made on a "Request for Appointment of Process Server" electronic form, which may be found on the Court's Web Site, <http://www.stlouisco.com>. (LawandPublicSafety/Circuit/Forms).

(F) This appointment as Special Process Server does not include the authorization to carry a concealed weapon in the performance thereof.

SERVICE RETURN

Any service by the St. Louis County Sheriff's Office shall be scanned into the courts case management system. Any service by another Sheriff or a Special Process Server or any other person authorized to serve process shall return to the attorney or party who sought service and the attorney shall file the return electronically to the Circuit Clerk.



IN THE 21ST JUDICIAL CIRCUIT COURT, ST. LOUIS COUNTY, MISSOURI

Judge or Division: MAURA B MCSHANE	Case Number: 18SL-CC00613
Plaintiff/Petitioner: JOHN KITCHIN JR	Plaintiff's/Petitioner's Attorney/Address RYAN A. KEANE 7777 Bonhomme Ave. SUITE 1600 ST LOUIS, MO 63105
Defendant/Respondent: BRIDGETON LANDFILL, LLC	Court Address: ST LOUIS COUNTY COURT BUILDING 105 SOUTH CENTRAL AVENUE CLAYTON, MO 63105
Nature of Suit: CC Other Miscellaneous Actions	(Date File Stamp)

Summons in Civil Case

The State of Missouri to: ALLIED SERVICES, LLC
 Alias:
 R/A: CT CORPORATION COMPANY
 120 S CENTRAL AVE
 CLAYTON, MO 63105

COURT SEAL OF

 ST. LOUIS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

19-MAR-2018
 Date

Joan P. Salamy
 Clerk

Further Information:
 JJ

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within thirty days after the date of issue.

I certify that I have served the above summons by: (check one)

- delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.
- leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with _____ a person of the Defendant's/Respondent's family over the age of 15 years.
- (for service on a corporation) delivering a copy of the summons and a copy of the petition to _____ (name) _____ (title).
- other _____.

Served at _____ (address)
 in _____ (County/City of St. Louis), MO, on _____ (date) at _____ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

(Seal) Subscribed and sworn to before me on _____ (date).
 My commission expires: _____ Date _____ Notary Public

Sheriff's Fees, if applicable

Summons \$ _____
 Non Est \$ _____
 Sheriff's Deputy Salary
 Supplemental Surcharge \$ 10.00
 Mileage \$ _____ (_____ miles @ \$ _____ per mile)
 Total \$ _____

A copy of the summons and a copy of the petition must be served on **each** Defendant/Respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.



IN THE 21ST JUDICIAL CIRCUIT COURT, ST. LOUIS COUNTY, MISSOURI

Judge or Division: MAURA B MCSHANE	Case Number: 18SL-CC00613
Plaintiff/Petitioner: JOHN KITCHIN JR	Plaintiff's/Petitioner's Attorney/Address RYAN A. KEANE 7777 Bonhomme Ave. SUITE 1600 ST LOUIS, MO 63105
Defendant/Respondent: BRIDGETON LANDFILL, LLC	Court Address: ST LOUIS COUNTY COURT BUILDING 105 SOUTH CENTRAL AVENUE CLAYTON, MO 63105
Nature of Suit: CC Other Miscellaneous Actions	(Date File Stamp)

Summons in Civil Case

The State of Missouri to: BRIDGETON LANDFILL, LLC
 Alias:
 R/A: THE CORPORATION COMPANY
 120 S CENTRAL AVE
 CLAYTON, MO 63105

COURT SEAL OF

 ST. LOUIS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

19-MAR-2018
 Date

Joan P. Salamy
 Clerk

Further Information:
 JJ

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within thirty days after the date of issue.

I certify that I have served the above summons by: (check one)

- delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.
- leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with _____ a person of the Defendant's/Respondent's family over the age of 15 years.
- (for service on a corporation) delivering a copy of the summons and a copy of the petition to _____ (name) _____ (title).
- other _____.

Served at _____ (address)
 in _____ (County/City of St. Louis), MO, on _____ (date) at _____ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

(Seal) Subscribed and sworn to before me on _____ (date).
 My commission expires: _____ Date _____ Notary Public

Sheriff's Fees, if applicable

Summons \$ _____
 Non Est \$ _____
 Sheriff's Deputy Salary _____
 Supplemental Surcharge \$ 10.00
 Mileage \$ _____ (_____ miles @ \$ _____ per mile)
 Total \$ _____

A copy of the summons and a copy of the petition must be served on **each** Defendant/Respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.



IN THE 21ST JUDICIAL CIRCUIT COURT, ST. LOUIS COUNTY, MISSOURI

Judge or Division: MAURA B MCSHANE	Case Number: 18SL-CC00613
Plaintiff/Petitioner: JOHN KITCHIN JR	Plaintiff's/Petitioner's Attorney/Address: RYAN A. KEANE 7777 Bonhomme Ave. SUITE 1600 ST LOUIS, MO 63105
Defendant/Respondent: BRIDGETON LANDFILL, LLC	Court Address: ST LOUIS COUNTY COURT BUILDING 105 SOUTH CENTRAL AVENUE CLAYTON, MO 63105
Nature of Suit: CC Other Miscellaneous Actions	(Date File Stamp)

**Summons for Personal Service Outside the State of Missouri
(Except Attachment Action)**

The State of Missouri to: **REPUBLIC SERVICES, INC.**
 Alias:
 R/A: CT CORPORATION SYSTEM
 3800 N CENTRAL AVE SUITE 460
 PHOENIX, AZ 85012

COURT SEAL OF

 ST. LOUIS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, copy of which is attached, and to serve a copy of your pleading upon the attorney for the Plaintiff/Petitioner at the above address all within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to file your pleading, judgment by default will be taken against you for the relief demanded in this action.

19-MAR-2018
 Date
 Further Information:
 JJ

James P. Delaney
 Clerk

Officer's or Server's Affidavit of Service

I certify that:

- I am authorized to serve process in civil actions within the state or territory where the above summons was served.
- My official title is _____ of _____ County, _____ (state).
- I have served the above summons by: (check one)
 - delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.
 - leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with _____, a person of the Defendant's/Respondent's family over the age of 15 years.
 - (for service on a corporation) delivering a copy of the summons and a copy of the petition to _____ (name) _____ (title).
 - other (describe) _____.

Served at _____ (address)
 in _____ County, _____ (state), on _____ (date) at _____ (time).

 Printed Name of Sheriff or Server

 Signature of Sheriff or Server

Subscribed and Sworn To me before this _____ (day) _____ (month) _____ (year)

I am: (check one) the clerk of the court of which affiant is an officer.
 the judge of the court of which affiant is an officer.
 authorized to administer oaths in the state in which the affiant served the above summons. (use for out-of-state officer)
 authorized to administer oaths. (use for court-appointed server)

(Seal) _____
 Signature and Title

Service Fees, if applicable

Summons \$ _____
 Non Est \$ _____
 Mileage \$ _____ (_____ miles @ \$ _____ per mile)
 Total \$ _____

See the following page for directions to clerk and to officer making return on service of summons.

Directions to Clerk

Personal service outside the State of Missouri is permitted only upon certain conditions set forth in Rule 54. The clerk should insert in the summons the names of only the Defendant/Respondent or Defendants/Respondents who are to be personally served by the officer to whom the summons is delivered. The summons should be signed by the clerk or deputy clerk under the seal of the court and a copy of the summons and a copy of the petition for each Defendant/Respondent should be mailed along with the original summons to the officer who is to make service. The copy of the summons may be a carbon or other copy and should be signed and sealed in the same manner as the original but it is unnecessary to certify that the copy is a true copy. The copy of the motion may be a carbon or other copy and should be securely attached to the copy of the summons but need not be certified a true copy. If the Plaintiff's/Petitioner has no attorney, the Plaintiff's/Petitioner's address and telephone number should be stated in the appropriate square on the summons. This form is not for use in attachment actions. (See Rule 54.06, 54.07 and 54.14)

Directions to Officer Making Return on Service of Summons

A copy of the summons and a copy of the motion must be served on each Defendant/Respondent. If any Defendant/Respondent refuses to receive the copy of the summons and motion when offered, the return shall be prepared accordingly so as to show the offer of the officer to deliver the summons and motion and the Defendant's/Respondent's refusal to receive the same.

Service shall be made: (1) On Individual. On an individual, including an infant or incompetent person not having a legally appointed guardian, by delivering a copy of the summons and motion to the individual personally or by leaving a copy of the summons and motion at the individual's dwelling house or usual place of abode with some person of the family over 15 years of age, or by delivering a copy of the summons and petition to an agent authorized by appointment or required by law to receive service of process; (2) On Guardian. On an infant or incompetent person who has a legally appointed guardian, by delivering a copy of the summons and motion to the guardian personally; (3) On Corporation, Partnership or Other Unincorporated Association. On a corporation, partnership or unincorporated association, by delivering a copy of the summons and motion to an officer, partner, or managing or general agent, or by leaving the copies at any business office of the Defendant/Respondent with the person having charge thereof or by delivering copies to its registered agent or to any other agent authorized by appointment or required by law to receive service of process; (4) On Public or Quasi-Public Corporation or Body. Upon a public, municipal, governmental or quasi-public corporation or body in the case of a county, to the mayor or city clerk or city attorney in the case of a city, to the chief executive officer in the case of any public, municipal, governmental, or quasi-public corporation or body or to any person otherwise lawfully so designated.

Service may be made by an officer or deputy authorized by law to serve process in civil actions within the state or territory where such service is made.

Service may be made in any state or territory of the United States. If served in a territory, substitute the word "territory" for the word "state."

The officer making the service must swear an affidavit before the clerk, deputy clerk, or judge of the court of which the person is an officer or other person authorized to administer oaths. This affidavit must state the time, place, and manner of service, the official character of the affiant, and the affiant's authority to serve process in civil actions within the state or territory where service is made.

Service must not be made less than ten days nor more than 30 days from the date the Defendant/Respondent is to appear in court. The return should be made promptly and in any event so that it will reach the Missouri Court within 30 days after service.



IN THE 21ST JUDICIAL CIRCUIT COURT, ST. LOUIS COUNTY, MISSOURI

Judge or Division: MAURA B MCSHANE	Case Number: 18SL-CC00613
Plaintiff/Petitioner: JOHN KITCHIN JR	Plaintiff's/Petitioner's Attorney/Address RYAN A. KEANE 7777 Bonhomme Ave. SUITE 1600 ST LOUIS, MO 63105
Defendant/Respondent: BRIDGETON LANDFILL, LLC	Court Address: ST LOUIS COUNTY COURT BUILDING 105 SOUTH CENTRAL AVENUE CLAYTON, MO 63105
Nature of Suit: CC Other Miscellaneous Actions	(Date File Stamp)

Summons in Civil Case

The State of Missouri to: ROCK ROAD INDUSTRIES, INC.

Alias:

R/A: CT CORPORATION COMPANY
120 S CENTRAL AVE
CLAYTON, MO 63105

COURT SEAL OF



ST. LOUIS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

19-MAR-2018

Date

Joan P. Salamy
Clerk

Further Information:
JJ

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- leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with _____ a person of the Defendant's/Respondent's family over the age of 15 years.
- (for service on a corporation) delivering a copy of the summons and a copy of the petition to _____ (name) _____ (title).
- other _____.

Served at _____ (address)
in _____ (County/City of St. Louis), MO, on _____ (date) at _____ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

(Seal) Subscribed and sworn to before me on _____ (date).
My commission expires: _____ Date _____ Notary Public

Sheriff's Fees, if applicable

Summons \$ _____
Non Est \$ _____
Sheriff's Deputy Salary _____
Supplemental Surcharge \$ 10.00
Mileage \$ _____ (_____ miles @ \$ _____ per mile)
Total \$ _____

A copy of the summons and a copy of the petition must be served on each Defendant/Respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

**TWENTY-FIRST JUDICIAL CIRCUIT OF THE STATE OF MISSOURI
ST. LOUIS COUNTY**

**JOHN C. KITCHIN, JR., NORTH)
WEST AUTO BODY COMPANY, and)
MARY MENKE, on behalf of themselves and)
all others similarly situated,)**

Plaintiffs,)

vs.)

**BRIDGETON LANDFILL, LLC,)
REPUBLIC SERVICES, INC.,)
ALLIED SERVICES, LLC, and)
ROCK ROAD INDUSTRIES, INC.,)**

Defendants.)

Cause No. 18SL-CC00613

Division No. 2

JURY TRIAL DEMANDED

FIRST AMENDED CLASS ACTION PETITION

COME NOW Plaintiffs John C. Kitchin, Jr., North West Auto Body Company, and Mary Menke, on behalf of themselves and all others similarly situated, by and through counsel, and for their First Amended Class Action Petition against Defendants Bridgeton Landfill, LLC, Republic Services, Inc., Allied Services, L.L.C., and Rock Road Industries, Inc, state and allege as follows:

1. Since World War II, big companies have made significant profits processing, handling, and storing radioactive materials in the St. Louis area. This activity began seven decades ago, when a government contractor began processing uranium ores in downtown St. Louis City. The hazardous, toxic, carcinogenic, radioactive wastes resulting from the processing of these ores are ounce for ounce some of the most dangerous materials on the planet. Despite knowing that that these materials were some of the most harmful substances on Earth, the Defendants accepted these wastes and used them for daily cover at their landfill. Despite knowing that these materials were radioactive, the Defendants allowed them to be released as building material to an unknown

number of people, which was subsequently incorporated into buildings and driveways in the St. Louis metropolitan area. Defendants treated these hazardous, toxic, carcinogenic, radioactive wastes with about the same level of care that a reasonable person might give to common household garbage, dumping it without authority from the State of Missouri and in violation of law, like everyday trash into the West Lake Landfill—a landfill which experts indicate is not even suitable for garbage, as it contains no liner.

2. Since then, that radioactive material, negligently dumped in an area surrounded by peaceful neighborhoods and playgrounds, has tormented the lives of everyday people—moms and dads who thought they were raising their kids in a clean home in a safe, quiet neighborhood; kids who want nothing more than to play in the backyard; and small business owners who had invested everything to build the American dream for their families. These everyday St. Louisans now find their lives disrupted, their homes contaminated, their businesses upended, and their properties devalued. They find their once-quaint neighborhoods filled with technicians testing and prodding their backyards and the dust of their vacuum cleaners to identify the quantity and the toxicity of the radioactive material Defendants have dumped into their lives.

3. Business owners spent substantial sums of money developing Earth City, which is now encompassed within impacted zone, and included in the scope of the class, as defined herein.

4. Tests conducted by representatives of the United States of America and others now confirm that the areas around the West Lake and Bridgeton Landfills (referred to herein as the “Landfill” which consists of several inactive landfills including West Lake and Bridgeton) are contaminated with the same radioactive wastes generated in the processing of uranium ores in the St. Louis area. The off-site radioactive waste found today in the real property, which contains

business and homes, surrounding the Landfill has the fingerprint (or profile) of the ore processed in St. Louis which generated the hazardous, toxic, carcinogenic, radioactive wastes that were dumped into and around the Landfill.

5. These radioactive wastes are known human carcinogens that can cause chronic damage to the skin, reproductive system, blood forming system, digestive system, central nervous system, and immune system in addition to numerous cancers. Illnesses such as cancers or birth defects may take a number of years after exposure to the radioactive material to appear.

6. Defendants have failed to take responsibility for their negligent behavior, failed to clean up the area, failed to move the residents and businesses out, and failed to make amends for the widespread damage they have caused. Instead, Defendants have hidden behind misstatements and omissions, misleading the public about the widespread contamination Defendants have caused and minimizing the immense risks to public health and safety that resulted from Defendants' actions.

7. It is time that Defendants finally be held accountable for their reckless and tortious conduct. This particular lawsuit seeks to correct the harm Defendants inflicted on just a few of the victims.

8. The Landfill is Superfund site, and the U.S. Environmental Protection Agency ("EPA") administrator, Scott Pruitt, has recently ordered at least a \$200 million plus cleanup that will take many years to complete. This cleanup will result in the uncovering and handling of radioactive wastes that will result in additional releases from the site. (This statement is provided for informational purposes only, as Plaintiffs are making no claims under the laws of the United States).

9. Plaintiff John C. Kitchin, Jr. owns property in Bridgeton, Missouri that Defendants contaminated. His property, including the land and building (hereinafter “North West Auto Body Property”), is contaminated with radioactive wastes from the Landfill, that are hazardous, toxic, carcinogenic.

10. Plaintiff North West Auto Body Company has lost significant business, revenue and customers as a result of the hazardous, toxic, carcinogenic, radioactive wastes from the Landfill, and will incur substantial additional costs in the future, including but not limited to future lost business and relocation costs.

11. Plaintiff Mary Menke owns and resides in property in Bridgeton, Missouri that Defendants contaminated. Her property, including the land and building (hereinafter “Menke Property”), is contaminated with radioactive wastes from the Landfill, that are hazardous, toxic, carcinogenic.

12. Plaintiffs, as well as all members of the proposed class, have sustained significant damages, as a result of Defendants’ conduct. Defendants should compensate Plaintiffs for their damages, and provide further relief as set forth below in this Petition.

JURISDICTION AND VENUE

13. This court has jurisdiction over the subject matter and the parties in this case because the causes of action stated in this Petition arose out of business activities conducted solely in Missouri, and out of torts committed solely in Missouri by resident and non-resident defendants.

14. Complete diversity does not exist in this matter as Defendant Rock Road Industries is a Missouri corporation and Plaintiffs are Missouri citizens.

15. Venue is proper in this court pursuant to Mo. Rev. Stat. §508.010, because Defendants' conduct giving rise to this action took place in St. Louis County, Missouri.

16. Plaintiffs do not allege any causes of actions arising under any laws of the United States.

17. Defendants Rock Road Industries and Bridgeton Landfill, LLC previously declared that the Price-Anderson Act does not apply to them because the West Lake Landfill is not a licensed nuclear facility: "Count One, arising under the Price-Anderson Act, is wholly inapplicable to Rock Road and Bridgeton Landfill, as the West Lake Landfill is not a nuclear facility subject to licensing by the nuclear Regulatory Commission."¹

18. Plaintiffs' claims do not fall within the scope of the Price-Anderson Act. The Landfill is not and has never been a licensed nuclear facility. The landfill has never received a license to possess, transport, or dispose of any radioactive wastes. Defendants have never entered into an indemnification agreement with the United States government under 42 U.S.C. § 2210 with respect to the complained activities.

19. Plaintiffs expressly contend that no occurrences that form the basis for this suit rise to the level of a nuclear incident. Plaintiffs' claims are freestanding state law claims concerning traditional state regulation and do not implicate the Price-Anderson Act and its textually manifest concerns related to liability limitation and indemnification. This principle was clearly enunciated by the Hon. Neil Gorsuch in the case of *Cook v. Rockwell Intern. Corp.*, 790 F.3d 1088 (10th. Cir. 2015) also known as the Rocky Flats litigation.

¹ Defendants Rock Road Industries and Bridgeton Landfill, LLC's Memorandum in Support of Motion to Dismiss (Doc 15), *Adams v. MI Holdings, Inc.* Case No. 4:12-cv-00641-JCH

20. At the time of the outrageous, reckless, negligent acts that form the basis for this lawsuit occurred, the Price-Anderson Act did not apply because the wastes at issue were not subject to said Act.

21. The Price-Anderson Act does not apply to the indisputably hazardous, toxic and carcinogenic wastes at issue in this First Amended Petition.

THE PARTIES

Plaintiffs

22. Plaintiff John C. Kitchin, Jr. is a Missouri citizen who owns real property located at 12990 St. Charles Rock Road, (“North West Auto Body Property”) including an automotive body shop owned and operated by Mr. Kitchin’s family, North West Auto Body Company. Plaintiff purchased the North West Auto Body Property in 1995. The property adjoins what is now the Landfill in Bridgeton, Missouri. Plaintiff John C. Kitchin, Jr. first learned that the North West Auto Body Property was contaminated with radioactive material in 2017.

23. Plaintiff Mary Menke is a Missouri citizen who owns real property located at 3388 Tortosa Dr. in Bridgeton, Missouri. Plaintiff Mary Menke first learned that her property was contaminated with radioactive material in 2018.

24. As a result of Defendants’ acts and omissions, Plaintiffs have sustained significant damages including damages to their property and the loss of use and enjoyment thereof.

Defendants

25. In this Petition, the defendants in this lawsuit are categorized into two groups, namely the owners and operators of the Landfill:

A. Landfill Owner Defendants

- i. Bridgeton Landfill, LLC, which owns the Bridgeton and West Lake Landfills; and
- ii. Rock Road Industries, Inc., which owned or owns the West Lake Landfill.

B. Landfill Operator Defendants

- i. Republic Services, Inc., which owns, oversees, and directs the environmental decisions and conduct of Bridgeton Landfill, LLC, Allied Services, L.L.C., and Rock Road Industries, Inc., and operates the Bridgeton and West Lake Landfills; and
- ii. Allied Services, L.L.C., which operates Bridgeton and West Lake Landfills.

26. Since at least November 2010, the Defendants have owned and/or operated the Bridgeton and West Lake Landfills.

27. Republic Services, Inc. (“Republic”) is a Delaware corporation with its principal place of business in the State of Arizona that carries on continuous and systematic business activities within the State of Missouri.

A. Republic describes itself as “the second largest provider of services in the domestic non-hazardous solid waste industry, as measured by revenue as well as a Fortune 500 company, publicly traded on the New York Stock Exchange (NYSE; RSF).”² Despite Republic’s record of violations and the widespread injuries resulting from Republic’s conduct, Republic promises the public that it lives by “high environmental and sustainability standards.”³ Republic has engaged in extensive

² <https://www.republicservices.com/about-us>

³ <http://www.republicservices.com/customer-support/facilities>

professional public relations efforts to downplay the significance of the problem, and their misleading statements can only be characterized as mere “puffery.”

- B. Republic’s presence in Missouri is immense, servicing more than 300 cities and towns throughout the state, including many in St. Louis County.⁴ Republic continuously and systematically avails itself of the protection of Missouri laws in St. Louis County courts, and regularly appears to defend itself in lawsuits tried here. Republic is responsible for promulgating and enforcing environmental and health and safety policies and procedures to its subsidiaries, which in this case they failed to adequately do.
- C. This lawsuit arises out of damages that resulted from Republic’s acts and omissions within the State of Missouri. Since 2008, Republic and its subsidiaries have maintained daily operational and managerial control over the management and environmental decisions of the Bridgeton and West Lake Landfills, decisions which gave rise to the violations of law and damage to property alleged in this Petition. Republic did so directly and through its subsidiaries Allied Services, LLC, Bridgeton Landfill LLC, and Rock Road Industries, Inc.

28. Allied Services, LLC (“Allied”), a Delaware limited liability company with its principal place of business in the state of Arizona, is a wholly-owned subsidiary of Republic Services, Inc., that continuously and systematically conducts business in the State of Missouri under its own name and under the fictitious name “Republic Services of Bridgeton.”

⁴ <https://www.republicservices.com/locations/missouri>

- A. Allied conducts daily operations of the Bridgeton Landfill and the West Lake Landfill.
 - B. Allied regularly and routinely avails itself of the protection of Missouri laws in St. Louis County courts, and regularly appears to defend itself in lawsuits tried here.
 - C. This lawsuit arises out of damages that resulted from Allied's acts and omissions within the State of Missouri. Since 2008, Allied has maintained daily operational and managerial control over the management and environmental decisions of the Bridgeton and West Lake Landfills, decisions which gave rise to the violations of law and damage to property alleged in this Petition.
 - D. Allied has also promulgated environmental and health and safety policies and procedures to its subsidiaries, which in this case they failed to adequately do.
29. Bridgeton Landfill, LLC formerly "Laidlaw Waste Systems" ("Landfill Owner"), is a Missouri limited liability company with its principle place of business in the State of Missouri. It continuously and systematically conducts business activities in the State of Missouri.
- A. Upon information and belief, Bridgeton Landfill, LLC owns the Bridgeton Landfill and the West Lake Landfill.
 - B. Bridgeton Landfill has continuously and systematically availed itself of the protection of Missouri laws in St. Louis County courts, and regularly appears to defend itself in lawsuits tried here.
 - C. This lawsuit arises out of damages that resulted from Bridgeton Landfill's acts and omissions within the State of Missouri. Specifically, since 2008, Bridgeton Landfill has owned, operated and maintained daily operational and managerial

control over the management and environmental decisions of the Bridgeton Landfill and the West Lake Landfill, which gave rise to the violations of law and damage to property alleged in this Petition.

30. Rock Road Industries, Inc. (“Rock Road”) is a Missouri corporation with its principal place of business in St. Louis, Missouri. Rock Road is a wholly-owned subsidiary of Republic Services, Inc. that continuously and systematically conducts business in the State of Missouri.

A. This lawsuit arises out of damages that resulted from Rock Road Industries, Inc.’s acts and omissions within the State of Missouri. Upon information and belief Rock Road Industries, Inc. owns the West Lake Landfill along with Bridgeton Landfill, LLC. Rock Road Industries has maintained daily operational and managerial control over the management and environmental decisions of the West Lake Landfill, decisions which gave rise to the violations of law and damage to property alleged in this Petition.

CLASS ACTION ALLEGATIONS

31. Plaintiffs file this class action petition pursuant to Missouri Supreme Court Rule 52.08 on behalf of all Missouri citizens who are owners of residential property and who are residents in the vicinity of the West Lake Landfill as detailed below.

32. Plaintiffs bring this action on behalf of themselves and the Class against Defendants to recover damages to their property and to obtain injunctive relief in the form of a total and complete cleanup of the contamination and to prevent and eliminate further contamination.

33. This action is maintainable as a class action and should be certified under Missouri

Supreme Court Rule 52.08.

34. The proposed class for property damage claims is defined as follows (“Property Damage Subclass”):

All Missouri citizens who currently own real property within the 11.0 square mile geographic region in the vicinity of the West Lake Landfill, as shown in the map in Figure 1 below, bounded by the Missouri River to the west and a line south of Rt. 370 to the north, with the eastern boundary following a southerly line across Old St. Charles Rd. before crossing the residential area lying to the south of the landfill.

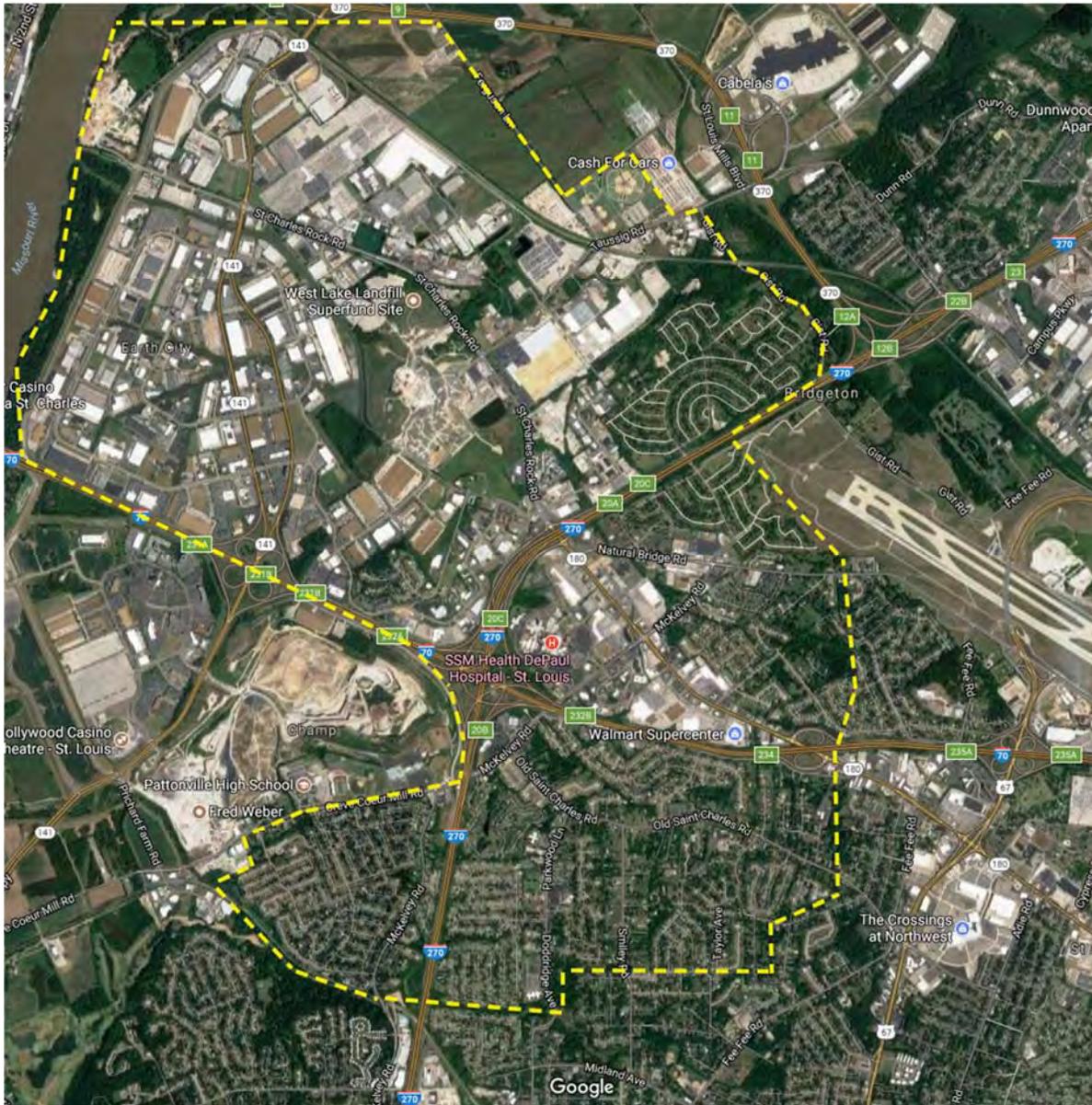


Figure 1. Class Area

“Own,” in the context of the class and subclass definitions, includes those who hold any fee simple estate or life estate.

35. The proposed class for medical monitoring is defined as follows (“Medical

Monitoring Subclass”):

All Missouri citizens who currently reside, or have resided since 1973, on a property within the 11.0 square mile geographic region in the vicinity of the West Lake Landfill, as shown in the map in Figure 1 above, bounded by the Missouri River to the west and a line south of Rt. 370 to the north, with the eastern boundary following a southerly line across Old St. Charles Rd. before crossing the residential area lying to the south of the landfill.

36. Excluded from the Property Damage Subclass and the Medical Monitoring Subclass (collectively, the “Class”) are Defendants and their officers, directors, and employees, as well as employees of any of Defendants’ subsidiaries, affiliates, successors, or assignees. Also excluded are the immediate family members of the above persons. Also excluded is any trial judge who may preside over this case. Also excluded from the class are persons who previously entered into valid and enforceable settlements of property damage claims related to the claims asserted herein with any of the Defendants.

37. The requirements for maintaining this action as a class action are satisfied, as set forth immediately below.

38. The proposed Classes are so numerous that the individual joinder of all absent class members is impracticable. While the exact number of absent Class Members is unknown to Plaintiffs currently, it is ascertainable by appropriate discovery and Plaintiffs, upon information and belief, allege that the proposed Class includes more than twenty-five members. The requirement of numerosity is therefore satisfied.

39. Common questions of law or fact exist as to all proposed Class Members and predominate over any questions which affect only individual members of the proposed Classes, and the answers to which will drive classwide resolution of Plaintiffs’ claims asserted herein.

These common questions of law or fact include:

- a. Whether Defendants engaged in the abnormally dangerous activity of storing radioactive waste;
- b. Whether Defendants unreasonably and unlawfully stored radioactive materials at the West Lake Landfill;
- c. Whether Defendants created and continue to create a high degree of risk of harm to Plaintiffs' and Class Members' property;
- d. Whether Defendants have intentionally, unreasonably, negligently, recklessly, willfully, wantonly and maliciously allowed the emission of radon gas and radioactive particles onto and around Plaintiffs' and Class Members' property;
- e. Whether Defendants' conduct or omissions affecting land surrounding the West Lake Landfill resulted in Plaintiffs' and Class Members' loss of use and enjoyment of their property;
- f. Whether the loss in property value suffered by Plaintiffs and Class is a result of Defendants' actions;
- g. Whether Plaintiffs and Class are entitled to damages; and
- h. Whether Defendants' conduct rises to the level of willfulness so as to justify punitive damages.

40. The claims of the Plaintiffs are typical of the claims of the Classes. Plaintiffs and all Class Members own or reside on land located near the location where Defendants recklessly dumped radioactive waste.

41. Plaintiffs will fairly and adequately represent the interests of the members of the

Class. Plaintiffs have no interest adverse to the interests of the members of the Class. Plaintiffs have retained competent attorneys who have experience in class action litigation.

42. Defendants have acted or refused to act on grounds that apply generally to the Class as discussed herein, such that final injunctive relief is appropriate for the Class as a whole.

43. Unless a class-wide injunction is issued, Defendants will continue to allow contamination of the properties of Plaintiffs and Class and will continue to violate Missouri law resulting in harm to thousands of Missouri citizens.

44. A class action is a superior method for the fair and efficient adjudication of this controversy. The adjudication of a separate action by individual members of the classes would create a risk of (a) inconsistent or varying adjudications with respect to individual members of the class; or (b) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests. Upon information and believe each of the Class Members suffered the same sort of damages and injuries as those suffered by the Plaintiffs, due to the contamination of their property by radioactive waste from the West Lake Landfill. In addition, this class action will allow for the resolution of identical claims in an efficient manner that avoids fragmented litigation in which inconsistent results could occur.

45. Questions of law or fact common to the members of the Classes predominate over any questions affecting only individual members. There is no special interest in the members of the classes individually controlling the prosecution of separate action. The expense and burden of individual litigation make it impossible for the Class Members individually to address the wrongs done to them.

46. There will be no difficulty in managing this lawsuit as a class action. Evidence relating to Defendants' alleged violations will be applicable to all members of the class; there are accepted means for notifying class members who have suffered injuries and damages described herein.

47. All of the class members are citizens of Missouri.

48. The principal injuries resulting from the conduct of the Defendants were incurred in Missouri.

49. No class action asserting similar factual allegations has been filed against any of the defendants in the preceding three years.

50. Rock Road Industries, Inc. and Bridgeton Landfill, LLC are Missouri citizens from whom significant relief is sought and whose conduct forms a significant basis of the below claims.

FACTS

Radioactive Wastes

51. Ounce for ounce, radioactive isotopes are the most toxic materials known to man.

52. Radiation is a type of energy transmitted over a distance. Some materials spontaneously emit radiation through a process known as radioactive decay. As these materials decay they release radiation energy and transform into other radioactive materials which will then also decay by releasing radiation energy and transforming into other materials.

53. Some radiation energies, including the radiation from the decay of radioactive materials used in nuclear and atomic processes, such as uranium, have the ability to penetrate other

material. When radiation energy interacts with other material, it causes a process called ionization⁵ which can damage chemical structures. When the “other material” that ionizing radiation passes through is human cells, it can cause damage within those cells resulting in mutation in genetic material which can lead to cancer and other harms.

54. People are exposed to radiation in two ways: external exposure from radioactive material in the environment and internal exposure by radioactive material that has entered the body. Radioactive material can be taken into the body by consuming foodstuffs and liquids with radioactivity in them, by inhaling radioactive gases or aerosol particles, or by absorption through wounds in the skin. The material taken in will internally expose the organs and tissues for as long as it remains inside the body.

55. One characteristic of the impact of exposure to ionizing radiation on the human body through both internal and external exposure is that even if the energy absorbed is low, the biological effects can still be gravely serious. The second characteristic is that there are latent biological effects of radiation.

56. The injuries resulting from exposure to ionizing radiation can also be separated into two categories: somatic injuries and genetic injuries. Somatic injuries are damages to the individual exposed. This can be damages to the skin, reproductive system, blood forming system,

⁵ Ionizing radiation is described as follows in the literature: “Ionizing Radiation is a form of radiation that includes alpha particles, beta particles, gamma rays, x-rays, neutrons, high-speed electrons, high-speed protons, and other particles capable of producing ions. Ionizing radiation has enough energy to cause changes in atoms through a process called ionization. Ionization can affect the atoms in living things and depending on the dose and exposure, can pose a serious health risk to humans. Ionizing radiation has sufficient energy to cause chemical changes in cells, causing damage to tissue and DNA in genes.” <https://www.epa.gov/radiation/radiation-health-effects>

digestive system, central nervous system, and immune system, as well as cancers. Illnesses such as cancers may take a number of years to appear.

57. Genetic injury is damage to the reproductive cells of the exposed individual in the form of mutation of their genetic cells. As a result, the probability of detrimental effects to the descendants of the exposed persons may greatly increase. These genetic mutations can be passed down to a person's offspring even generations later. These injuries include birth abnormalities and cancer.

58. One of the most dangerous aspects of radioactive materials is the length of time that radioactive isotopes will persist and accumulate in the environment. As detailed above, radioactive materials decay over time and each radioactive material gives off radiation energy as it decays and transforms into a different material. The rate at which a radioactive isotope decays is measured in half-life. The term "half-life" is defined as the time it takes for one-half of the atoms of a radioactive material to disintegrate. For example, after one half life, there will be one half of the original material, after two half-lives, there will be one fourth the original material, after three half-lives one eighth the original sample, and so forth.

59. Radium-226 has a half-life of 1,600 years. Radium-226 eventually decays to lead-210 and polonium-210. This means that as the radium-226 decays, it increases the lead-210 and polonium-210 at the Landfill and in the surrounding environment. Furthermore, half of the hazardous, carcinogenic radium-226 currently contaminating the West Lake Landfill will still remain as a grave problem even after 1,000 years from now if it is not physically removed. This is described in the scientific literature as follows:

Importantly, because the concentrations of short-lived radionuclides will progressively increase, the radioactivity at the site will likewise increase for the foreseeable future. For example, according to NRC, if the present day activity of ^{230}Th is estimated to be 100 times that of ^{226}Ra , then the alpha activity due to ^{226}Ra decay will increase fivefold over present levels in 100 years, nine-fold in 200 years, and 35-fold in 1000 years.⁶

60. According to the EPA's proposed corrective action plan of February 2, 2018, the risks related to radioactive materials at the Landfill will "increase in the future due to ingrowth of radium-226 from its parent thorium-230. These risks will increase according to the radioactive decay of thorium and will result in peak risks in approximately 9,000 years."

Radioactive Waste in the St. Louis Area

61. From 1942 to 1957, uranium ore was processed in downtown St. Louis City in association with the Manhattan Project.⁷ The Manhattan Project was the U.S. research project designed to develop the first nuclear weapons.

62. This downtown St. Louis facility was known as the St. Louis Downtown Site (the "SLDS") and was used to process uranium.

63. In the late 1940s, the Manhattan Project acquired a 21.7-acre tract of land near Lambert airport to store the hazardous, toxic, carcinogenic radioactive wastes from the uranium processing operations at the SLDS. The storage site near the airport is now referred to as the St. Louis Airport Site or SLAPS ("SLAPS").

⁶ Criss (2013) at 2-3 (citations omitted).

⁷ See n.10 (citing Alvarez (2013) and DeGarmo (2006)).

64. Radioactive wastes accumulated at SLAPS. These hazardous, toxic, carcinogenic, radioactive waste materials included pitchblende raffinate residues, radium-bearing residues, barium sulfate cake, Colorado raffinate residues, and were stored at SLAPS along with contaminated scrap. Some of these radioactive wastes were stored in bulk on the open ground in piles.

65. In the 1960's, some of the hazardous, toxic, carcinogenic radioactive wastes that had been stored at SLAPS were moved to a storage site on Latty Avenue in Hazelwood, Missouri (the "Latty Avenue Site") (part of this site later became the Hazelwood Interim Storage Site ("HISS")).

66. In or about 1973 the Defendants accepted over 46,000 tons of radioactive wastes combined with contaminated soil. Upon information and belief, despite knowing that the owner of these wastes was trying to dispose of dangerous radioactive materials for which the Landfill was not permitted to accept, the radioactive waste mixture was used by Defendants as daily cover for the Landfill. Defendants dumped the radioactive wastes into the Landfill and intentionally spread these wastes over a large area.

67. The scientific literature summarizes this dumping as follows:

In 1973, 8700 tons of radionuclide-bearing "leached barium sulfate" was allegedly dumped in an unlined Landfill in Bridgeton, MO that was not licensed to receive radwaste. This report finds that 1) the chemical and physical character of the radioactive materials has not been adequately characterized, and barium sulfate is probably not a major constituent; 2) the alpha and beta emissions of this material will increase 10x to 100x over present levels, reaching maximum activity in about 9000 years; 3) the Landfill has no protective barriers and a proximal subsurface fire; 4) the site has several hydrologic and geologic risk factors that magnify its unsatisfactory location in a populated area; 5) nuclear material has been in contact

with percolating waters and with a fluctuating water table; 6) groundwaters contaminated with radionuclides have migrated far from the original location of disposal; 7) background levels of radiation have been overstated, while other risks have been underestimated⁸

The Landfill

68. The West Lake Landfill is situated on about 200 acres at 13570 St. Charles Rock Road, in the City of Bridgeton. The Missouri River lies about one and one-half miles to the north and west of the Landfill. A shallow aquifer lies beneath the West Lake Landfill and surrounding neighborhoods.

69. Originally used for agriculture, the land became a limestone quarrying and crushing operation in 1939.

70. Beginning in the early 1950s, portions of the quarried areas and adjacent areas were used to dispose of municipal refuse, chemical wastes, industrial solid wastes, and construction/demolition debris.

71. The Landfill was never designed to be an adequate storage or disposal site for radioactive materials, nor was it ever licensed by the State of Missouri as such. Despite the Landfill not being properly designed to receive radioactive materials, the Defendants accepted hazardous, toxic, carcinogenic, radioactive wastes and spread them around the Landfill.

72. The inadequacies of the Landfill itself are described in the scientific literature as follows:

Although the West Lake Landfill contains significant amounts of long-lived radiotoxic wastes such as those contained in federally

⁸ Criss (2013) at 1.

licensed commercial radioactive waste Landfills, it meets virtually none of legal requirements governing shallow radioactive waste disposal to prevent off-site migration.⁹

73. The data collected on and around the Landfill documents radioactive contamination of soil, water, and air.

Onsite 226Ra concentrations in soils as high as 21,000 pCi/g were measured, compared to estimated background levels of 2 pCi/g. Elevated radium contents above the EPA's MCL of 5 pCi/l are also widespread in both the alluvial and bedrock aquifer within about 1500 feet of Areas 1 and Area 2. Airborne surveys established that external radiation levels exceeding 100µR/hr, while distal samples were <10 µR/hr. Levels recorded one meter above Area 2 were as high as 3-4 mR/hr, or as much as 400x higher than background. NRC reports that the subsequent addition of soil cover and construction debris to Areas 1 and 2 diminished these levels several fold.¹⁰

74. Other toxic and hazardous materials are expected to have been released via the air pathway, in addition to the radioactive materials. This phenomenon contributes to the damages complained of herein.

75. The Landfill stopped accepting waste on December 31, 2004 and is now used as a transfer station for municipal wastes.

76. The Landfill waste mass encompasses approximately 52 acres with approximately 240 feet below the ground's surface and a total waste thickness of 320 feet.

⁹ Kaltofen (2016) at 104.

¹⁰ Criss (2013) at 2 (citations omitted)

Radioactive Waste at the West Lake Landfill

77. Defendants caused or contributed to improper handling, storage, and disposal of an estimated 500,000 cubic yards of radioactive wastes in the Landfill. As a result, about 15 acres of the West Lake Landfill are filled with radioactive waste at depths up to 20 feet.

78. Upon information and belief, Defendants who operated the Landfill used the radioactive waste mixed with radioactive soil as daily cover in its Landfill operations thereby spreading the waste throughout the Landfill.

79. Defendants did not take necessary safety precautions when disposing of and handling the radioactive wastes and radioactive soil to prevent off-site contamination.

80. The staff of the Landfills were neither qualified, nor trained to handle or dispose of radioactive wastes in a safe manner.

81. The Landfill was not intended, nor designed to contain radioactive wastes. In reality, the Landfill is a chaotic pile of debris covered by unmanaged “natural vegetation, surrounded by a fence with radioactive [warning] signs.” Given the significant design and operational deficiencies, experts contend that the West Lake Landfill is even unsuitable for ordinary domestic waste.¹¹

The Fire

82. The Landfill has experienced problems with subsurface fires throughout its operational history. Despite having past experiences with subsurface fires, sufficient

¹¹ Criss (2013) at 4.

precautionary measures were not implemented to prevent future fires or to protect the radiologically contaminated areas from being affected.

83. Upon information and belief, Defendants discovered high temperatures in several monitoring wells. Upon information and belief, Defendants continued with aggressive gas extraction methods exacerbating the underground fire and enabling it to spread uncontrolled. Defendants finally reported to authorities that the Landfill was experiencing high temperatures on extraction wells evidencing a subsurface smoldering event.

84. Since then, the smoldering has intensified into a spreading subsurface fire evidenced by surface soil settlement, increased odors, elevated hydrogen levels, and high temperatures. High temperatures and smoke caused by the fire could mobilize radionuclides into the air and ultimately into soil, surface water, ground water.

85. Due to the fact that the radioactive material was used as daily cover around the landfill, it is more likely than not that some fire has already consumed radioactive material. However, if the subsurface fire reaches the radioactively impacted portions of the Landfill, the hot gases from the fire will likely cause fissures in the overburden material. These fissures may allow additional quantities of radioactive radon gas to escape the Landfill and become deposited as lead-210 onto properties in the class boundary as it decays.

86. A subsurface fire in the radioactively contaminated areas would be expected to create increased pressure conditions within the Landfill and force out entrained radioactive gases, including radon which is extremely toxic to breathe. A subsurface fire may be present in the radioactively contaminated areas for a long period of time before it is detected, because the only

apparent means to detect a subsurface smoldering event after closure is through annual visual inspections.

87. Another effect of a subsurface fire or smoldering event would be increased leachate production which has been observed in the Bridgeton Landfill from condensation of large amounts of steam.

88. The literature describes the risk of the West Lake underground fire as follows:

An underground fire is currently ongoing in the municipal Landfill (OU-2) that is immediately south of Area 1 of OU-1. Such fires can burn for years, creating high underground temperatures, and releasing carbon monoxide, dioxins, VOCs and other noxious chemicals, and particulates into air. Numerous people who reside near the Landfill complained about odor and health problems at the January 17, 2013 public meeting in Bridgeton. Risks for adjacent, radionuclide-bearing OU-1 include but are not restricted to the following 1) fire can spread from OU-2 into OU-1, particularly because demolition and construction Landfills are known to have much higher risk than municipal Landfills; 2) subterranean fires can result in Landfills collapse, landslides and slumping, endangering personnel and exposing dangerous materials to the surface; 3) Landfill fires have high explosion risk because of methane, gas cylinders, and drums; 4) high temperatures and smoke could mobilize radionuclides into surface water, ground water and air.¹²

89. There are at least two human exposure risk pathways that would exist from a subsurface smoldering event or subsurface fire reaching the radioactive materials. The first is the risk of people being subjected to increased air exposures to contaminants such as breathing in radon gas, radon-226. As airborne concentrations of radon gas increase, so would the risk to the neighboring population of breathing in radon gas and developing injuries such as lung cancers. Additionally, as radon gas decays it will become deposited onto people's property and in their

¹² Criss (2013) at 4-5 (citations omitted).

homes as radioactive lead-210 and polonium-210 which would subject people to increased risk of internal exposure to radioactive materials. The second pathway is increased leachate production that could further move contaminants and radioactive materials into the groundwater.

90. Despite these risks, the Defendants have allowed the subsurface fire to spread uncontrolled.

91. From the start of the subsurface smoldering event and throughout the subsequent fire, Plaintiffs have regularly encountered noxious, putrid, and offensive odors on his property coming from the Landfill, which diminishes quality of life and results in lost property value.

The Spread of Defendants' Radioactive Waste to Off-Site Businesses and Homes

92. As stated herein, Defendants have violated numerous standards for protection against radiation promulgated by the state of Missouri. Defendants' negligent handling, storage, and disposal of radioactive wastes and radioactive soil as daily cover caused dangerous contaminants to be deposited in several areas throughout the Landfill site and to be highly susceptible to off-site migration of radioactive materials including radon gas, radioactive particles, and radioactively-contaminated groundwater.

93. An example of water impacts of the Landfill will put this in perspective. Every day, the Landfill generates about 150,000 gallons of contaminated hazardous liquid waste. In a doomed attempt to capture that waste, the Landfill Defendants installed a leachate collection system. But the leachate collection system itself was inadequate and has resulted in spills, releases, and leaks that have contributed to the groundwater and surface water contamination in the area.

94. Radiological and organic contamination was also detected in trees adjacent to and off-site from the Landfill in the vicinity of the North West Auto Body Property. The presence of

radioactive contamination in the trees resulted from the uptake of off-site contamination from the Landfill.

95. Recent studies of the Landfill area document radioactive radon gas emissions from the Landfill are falling out and contaminating soil. Kaltofen reported the following:

Levels of ^{210}Pb in key samples were well above background activities, and were significantly out of secular equilibrium with other members of the uranium decay chain. This is strong evidence that the ^{210}Pb originated by decay of short-lived, fugitive radon gas that escaped the Landfill.¹³

96. Importantly, wherever lead-210 occurs, it will decay to polonium-210, creating an additional dose, as a matter of the laws of physics.

97. In addition, recent studies of surface water runoff from the Landfill, particularly after heavy rains, document radioactive contaminated surface water runoff to off-site properties.¹⁴

98. Critical to the legacy of radioactive particles contaminating the homes and communities surrounding the Landfill is that:

- A. The radioactive contamination has gone *off-site*, and
- B. The off-site radioactive contamination has the *fingerprint* (or profile) of the hazardous, toxic, carcinogenic radioactive wastes generated from the processing of uranium ore in downtown St. Louis which was subsequently stored at SLAPS and Latty Avenue before being disposed of in the Landfill.

¹³ Kaltofen (2016) at 110.

¹⁴ EPA Finds Radiation in West Lake Landfill Runoff, *CBS St. Louis*, May 26, 2016, <http://stlouis.cbslocal.com/2016/05/26/epa-finds-radiation-inwestlake-landfill-runoff>.

99. Defendants have a long and consistent history of consciously disregarding the regulations for the control of radiation in Missouri by:

- A. failing to make such surveys as are reasonably necessary to comply with the regulations;
- B. failing to post adequate warning signs as required by the regulations;
- C. failing to obtain a specific license for the handling of radioactive materials and wastes;
- D. failing to adequately monitor or control its offsite effluent by air and water;
- E. failing to provide dosimetry to workers and more than occasional visits by members of the general public to the site;
- F. failing to have an adequate or proper radiation protection program for its workers, despite knowledge of the significant potential for those workers to be exposed to material emitting gamma, beta, alpha radiation;
- G. allowing off-site migration of the radioactive materials, resulting in a release to an unrestricted area;
- H. allowing excessive radon emanation from the landfill;
- I. allowing unmonitored offsite migration of contaminated surface waters without a specific license,
- J. failing to maintain adequate waste exposure records and reports;
- K. failing retain and employ qualified radiation protection experts;
- L. failing to supply former workers with a summary of their radiation dose;

- M. failing to see that all work with radioactive materials is carried under conditions which will minimize the possibility of spread of radioactive materials;
 - N. failing to monitor the workplace and prevent worker or visitors' clothing from becoming contaminated with radioactive materials;
 - O. failing to require third parties who were disposing of radioactive material at the site to obtain a specific license;
 - P. allowing the disposal of radioactive waste materials by dumping or burial at a site not approved by the Department of Health;
 - Q. failing to have an accurate accounting for all radioactive materials at the site; and
 - R. failing to have records which show the amount of radioactive material received, transferred, decayed in storage, disposed of, and other information as may be necessary to account for the difference between the amount of radioactive material received or produced and the amount on hand.
100. Defendants essentially violated every Missouri regulation related to radiation exposure.
101. Due to risk of gamma radiation exposure, EPA has directed Republic to cover portions of the landfill with six inches of fill to protect workers and innocent members of the general public who will be exposed to gamma radiation if they are in that area. To date, this recommendation has not been implemented.
102. This zone of excessive gamma radiation was identified in 1978 during a surveillance flight by the NRC. Despite being informed of this zone of excessive gamma radiation, Defendants did nothing.

103. To this day, Defendants, despite orders from the EPA, continued to disregard the presence of radioactive materials at the landfill, including by failing to protect workers and visitors from radiation, including at the transfer station.

104. The only time Defendants takes any action to remediate or protect workers or the public from radioactive wastes is when ordered to do so by governmental body.

Concealment of Facts Related to Risk

105. Republic and other Defendants through their silence have reassured government officials, the public and Plaintiffs that the Landfill has not contaminated nearby properties. In particular, Republic and its representatives, as well as its professional public relations firm(s), have made misrepresentations that were meant to assure Plaintiffs that:

- A. Any suspicion of off-site contamination from the Landfill are merely rumors “being spread by alarmists.”¹⁵
- B. Its activities “should reassure the community that they are safe from and not being exposed to any risk from groundwater beneath West Lake Landfill.”¹⁶
- C. The Landfill’s neighbors, including the Plaintiffs “can rest assured that they are safe.”¹⁷

¹⁵ Jacob Barker, Radium above federal guidelines in groundwater near West Lake at 2, *St. Louis Today*, Dec. 17, 2014.

¹⁶ *Id.*

¹⁷ Jacob Barker, Frustration with EPA handling of West Lake growing at 5, *St. Louis Today*, Jan. 3, 2015.

D. The fire and Landfill are both at a “managed state.”¹⁸

E. The waste at the Landfill presents no danger to public health.¹⁹

Defendants’ Radioactive Particles Contaminated the Plaintiffs’ Property

106. The North West Auto Body Property and Menke Property (collectively, Plaintiffs’ Property) are contaminated by radioactive material.

107. Samples taken on and around Plaintiffs’ Property confirm an elevated presence of radioactive particles.

108. Plaintiffs’ Property neighbors the Landfill. This proximity puts the Plaintiffs’ Property in the direct path of radioactive air emissions, radioactive particles distributed by the wind blowing such contamination off the site in dirt and dust, radon gas, and frequent offensive odors; all of which emanate from the Landfill.

109. The Kaltofen (2016) published scientific paper identified “strong evidence of short lived fugitive radon gas that escaped from the landfill.”²⁰ These air emissions fall out to soil and dust as ²¹⁰Pb, a highly radioactive isotope.

110. It is also clear that radioactive material will be distributed from the Landfill “by surface water and winds.”²¹ The surface water runoff threat is heightened during periods of high rainfall and flooding, and has been documented.²²

¹⁸ *Frustration with EPA handling of West Lake growing*, Jacob Barker, St. Louis Today, January 3, 2015 at p. 5.

¹⁹ *Id.*

²⁰ Kaltofen (2016) at 111.

²¹ Kaltofen (2016) at 104.

²² EPA Finds Radiation in West Lake Landfill Runoff, *CBS St. Louis*, May 26, 2016, <http://stlouis.cbslocal.com/2016/05/26/epa-finds-radiation-inwestlake-landfill-runoff>.

111. Frequent offensive odors from the Landfill are experienced by Plaintiffs.

112. The radioactive wastes, which are hazardous, toxic, carcinogenic, that have polluted the Plaintiffs' Property and continue to threaten to further pollute Plaintiffs' Property match waste fingerprint (or profile) of the hazardous, toxic, carcinogenic radioactive wastes dumped in the Landfill.

113. This radioactive contamination on Plaintiffs' property migrated from the Landfill. The contamination was caused by the Defendants' improper handling, storage, and disposal of radioactive materials.

114. Radioactive contamination of Plaintiffs' Property and frequent offensive odors render Plaintiffs' Property unfit for normal use and enjoyment, and destroys its fair market value.

115. As a direct and proximate result of Defendants' conduct, Plaintiffs and the Class are currently being subjected to radioactive waste contamination and will suffer irreparable harm if an injunction is not granted requiring Defendants conduct a total and complete cleanup of the contamination and to prevent and eliminate further contamination.

COUNT I – TRESPASS

(brought individually and on behalf of the Property Damage Subclass)

116. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

117. Plaintiff John C. Kitchin, Jr. owns and controls the North West Auto Body Property located at 12990 St. Charles Rock Road, more particularly described above.

118. Plaintiff Mary Menke owns and controls the Menke Property located at 3388 Tortosa Drive, more particularly described above.

119. Defendants own and control property located at the Bridgeton and West Lake Landfills, which adjoins Plaintiffs' property.

120. Defendants store and/or transport radioactive materials and other toxic and hazardous wastes on their property.

121. Defendants have used these radioactive materials in a manner that is unreasonable, unlawful, malicious, and wanton, resulting in an invasion of Plaintiffs' property.

122. Defendants have caused these radioactive materials to migrate from Defendants' property and contaminate Plaintiffs' property.

123. Defendants willfully, wantonly, and maliciously caused the emission of radon gas, and radioactive particles onto and around Plaintiffs' property through their Landfill operations.

124. It was reasonably foreseeable that Defendants' actions would and will continue to contaminate Plaintiffs' property with radioactive particles and other hazardous wastes.

125. The migration of radon gas and radioactive particles from Defendants' property onto Plaintiffs' property has resulted and continues to result in direct physical interference with Plaintiffs' property. Such contamination is incompatible with the normal use and enjoyment of Plaintiffs' Property.

126. Plaintiffs did not give Defendants permission or consent to interfere with his property in this manner. Through Defendants' actions and inactions, they are illegally and improperly using Plaintiffs' property to store hazardous, toxic, carcinogenic, radioactive wastes.

127. The contamination of Plaintiffs' property with radon gas and radioactive particles, and other hazardous wastes, has resulted in significant damage to the property.

128. As a direct and proximate cause of this continuing and recurring physical interference, Plaintiffs have suffered and continue to suffer injury, including decreased property value.

**COUNT II – PERMANENT NUISANCE
(brought individually and on behalf of the Property Damage Subclass)**

129. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

130. Plaintiffs John C. Kitchin, Jr. owns and controls the North West Auto Body Property, more particularly described above.

131. Plaintiff Mary Menke owns and controls the Menke Property located at 3388 Tortosa Drive, more particularly described above.

132. Landfill Defendants own and control property located at the Bridgeton and West Lake Landfills, which adjoins Plaintiffs' property.

133. Defendants unreasonably and unlawfully stored and used radioactive materials at the Landfill, which adjoins Plaintiffs' property.

134. The Defendants caused and contributed to the radioactive contamination of Plaintiffs' property.

135. The Landfill and the radioactive waste that the Landfill contains are a permanent construction that is necessarily injurious to Plaintiffs as installed. It is not practical or possible to abate the presence of the Landfill or the radioactive waste stored there.

136. Operating an unlicensed radioactive hazardous waste dump in a populated area is a nuisance *per se*.

137. Defendants have intentionally, unreasonably, negligently, recklessly, willfully, wantonly and maliciously allowed the emission of radon gas and radioactive particles onto and around Plaintiffs' property, resulting in unreasonable interference with Plaintiffs' use and enjoyment of their property. Such contamination is incompatible with the normal use and enjoyment of the North West Auto Body Property.

138. Defendants' interference with Plaintiffs' use and enjoyment of the property is substantial.

139. Defendants have intentionally, unreasonably, negligently, recklessly, willfully, wantonly and maliciously allowed the emission of noxious, offensive odors and various hazardous substances into the surrounding air resulting in unreasonable interference with Plaintiffs' use and enjoyment of the property.

140. Defendants' continuous and unrelenting noxious odors invading Plaintiffs' property causes inconvenience to Plaintiffs and prevents them from using the property.

141. As a direct and proximate result of Defendants' interference with Plaintiffs' use and enjoyment of the property, Plaintiffs have suffered permanent injury, including decreased property value.

COUNT III – TEMPORARY NUISANCE
(brought individually and on behalf of the Property Damage Subclass)

142. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

143. Plaintiff John C. Kitchin, Jr. owns and controls the North West Auto Body Property, more particularly described above.

144. Plaintiff Mary Menke owns and controls the Menke Property located at 3388 Tortosa Drive, more particularly described above.

145. Defendants own and control property located at the Bridgeton and West Lake Landfills, which adjoins Plaintiffs' property.

146. Defendants unreasonably and unlawfully store and use radioactive materials at the Landfill, which adjoins Plaintiffs' property.

147. The Defendants caused and contributed to the radioactive contamination of Plaintiffs' property.

148. The Defendants intentionally, unreasonably, negligently, recklessly, willfully, wantonly and maliciously allow the emission of radon gas and radioactive particles onto and around Plaintiffs' property, resulting in unreasonable interference with Plaintiffs' use and enjoyment of their property. Such contamination is incompatible with the normal use and enjoyment of the North West Auto Body Property.

149. Defendants' interference with Plaintiffs' use and enjoyment of the property is substantial.

150. Defendants intentionally, unreasonably, negligently, recklessly, willfully, wantonly and maliciously allow the emission of noxious, offensive odors and various hazardous substances into the surrounding air resulting in unreasonable interference with Plaintiffs' use and enjoyment of their property.

151. Defendants' use of the Landfill causes frequent and unrelenting noxious odors to invade Plaintiffs' property and prevents Plaintiffs from using their property.

152. As a direct and proximate result of Defendants' interference with Plaintiffs' use and enjoyment of the property, Plaintiffs have suffered and continue to suffer injury, including decreased property value.

**COUNT IV – NEGLIGENCE
(brought individually and on behalf of the Class)**

153. Plaintiffs re-allege and incorporate by reference every allegation of this Complaint as if each were set forth fully herein.

154. Radioactive isotopes are known human carcinogens and are among the most toxic materials known to man. When property becomes contaminated with these wastes, the dangers can persist in the environment for thousands of years. Radioactive wastes should be handled, stored, and disposed of with the utmost safety in mind. Exposures to radioactive wastes should be as low as is reasonably achievable.

155. Knowing of the grave dangers posed by these wastes, the Defendants owed a duty of care to the Plaintiffs and the public to ensure the safe and legal handling, storage, and disposal of the radioactive wastes in order to prevent significant injury to property and persons.

156. Defendants were negligent in accepting hazardous, toxic, carcinogenic radioactive wastes at a landfill located in a residential area that was not capable of safely and properly disposing of radioactive materials. The Landfill was not properly licensed, nor configured, nor staffed to handle the disposal of radioactive wastes. Upon information and belief Defendants used the radioactive materials which were mixed with contaminated soil as daily cover.

157. The Defendants owed a duty to the Plaintiffs to operate the Landfill in a safe, legal, and reasonable manner so as not to contaminate and interfere with surrounding properties. The

Defendants owed a duty not to accept radioactive wastes for which they were not licensed or qualified to handle. After accepting radioactive wastes, the Defendants had a duty to safely handle, store and/or dispose of the radioactive wastes in order to prevent significant injury to property and persons.

158. Defendants were negligent in the construction, design, operating and maintenance of the Landfill.

159. Defendants negligently accepted hazardous, toxic, carcinogenic radioactive wastes when the Landfill was not designed, nor staffed to handle the disposal of radioactive wastes. The negligent design and maintenance of the Landfill by Defendants failed to prevent the release of radon gas and radioactive particles and hazardous and toxic wastes onto surrounding properties in excess of guidelines.

160. Upon information and belief, Defendants' negligent training of personnel handling radioactive, toxic, and hazardous materials on site was a direct and proximate cause of damage to Plaintiffs' property.

161. Defendants' negligent use of radioactive wastes mixed with radioactive soil as daily cover spread contamination into a broader area and prevented Defendants and regulators from knowing the location of these dangerous wastes. The negligent use of radioactive materials as daily cover in an unlined Landfill resulted in contamination of the groundwater underlying the Landfill and surrounding properties.

162. Defendants were negligent in failing to prevent the subsurface fire. Defendants should have implemented adequate practices with respect to gas extraction to avoid subsurface fires after they initially dealt with problems with smoldering events and increased subsurface

temperatures in the 1990's. The subsurface fire along with the resulting noxious odors and increased risk of significant radon gas emissions are a direct and proximate result of the Defendants' negligence in the operation of the Landfill. Such contamination is incompatible with the normal use and enjoyment of the Plaintiffs' Property.

163. Defendants' negligence throughout the history of the mishandling and improper dumping of radioactive wastes in the Landfill has resulted in repeated releases of radon gas and radioactive particles and other hazardous materials as well as offensive odors onto Plaintiffs' property, in disregard of applicable regulations and property rights.

164. Defendants' negligence has damaged Plaintiffs' property by contaminating it with radioactive particles, toxic and other hazardous substances and noxious odors. Defendant's negligence diminished Plaintiffs' property value.

165. The injuries sustained by Plaintiffs are of the kind that do not occur without negligence.

166. Plaintiffs' injuries were the result of wastes generated, disposed of, and controlled by Defendants.

167. Plaintiffs did not consent to the injuries, nor did they contribute to the injuries in any way.

**COUNT V – NEGLIGENCE PER SE
(brought individually and on behalf of the Class)**

168. Plaintiffs re-allege and incorporate by reference every allegation of this Complaint as if each were set forth fully herein.

169. Defendants violated Missouri regulations for Protection against Ionizing Radiation, 19 C.S.R. 20-10.070, 20-10.090, Missouri Solid Waste Management Law and Regulations, 10 C.S.R. 80-2.020(1)(F), 80-3.010(3)(A)(2), 80-3.010(3)(B)(1), 80-3.010(8)(A), 80-3.010(9)(C)(2), 80-3.010(13)(C), 80-3.010(14)(C), 80-3.010(19)(A), 10 CSR 80-3.010(19)(C)(7); Mo. Rev. Stat. §§ 260.210.1(4), 260.380(1); Missouri Clean Water Act, Mo. Rev. State. § 644.051.1, and Missouri Air Conservation regulations, 10 C.S.R. 10-6.165, all of which require the safe storage and disposal of radioactive material so as to protect the health and safety of the public.

170. Plaintiffs are members of the class of persons that the Missouri regulations for Protection against Ionizing Radiation, Missouri Solid Waste Management Law and Regulations, and Missouri Air Conservation regulations were intended to protect

171. The contamination of Plaintiffs' land is the kind of injury that the Missouri regulations for Protection against Ionizing Radiation, Missouri Solid Waste Management Law and Regulations, Missouri Hazardous Waste Management Law, and Missouri Air Conservation regulations were designed to prevent.

172. Defendants' violations of Missouri regulations for Protection against Ionizing Radiation, Missouri Solid Waste Management Law and Regulations, and Missouri Air Conservation regulations were the proximate cause of Plaintiffs' injuries.

173. Defendants' negligence throughout the history of the mishandling and improper dumping hazardous, toxic, carcinogenic, radioactive wastes in the Landfill area has resulted in repeated releases of radon gas and radioactive particles and other hazardous materials as well as

offensive odors onto Plaintiffs' property in violation of applicable regulations and disregard for property rights.

174. Defendants' negligence has damaged Plaintiffs' property by contaminating it with radioactive particles, toxic and other hazardous substances and noxious odors. Defendant's negligence diminished Plaintiffs' property value.

175. Plaintiffs did not consent to the injuries, nor did they contribute to the injuries in any way.

**COUNT VI – STRICT LIABILITY/ABSOLUTE LIABILITY
(brought individually and on behalf of the Class)**

176. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

177. Defendants engaged in the abnormally dangerous activity of handling, storing, and/or disposing of radioactive waste.

178. By handling, storing, and/or disposing of radioactive waste, Defendants have created and continue to create a high degree of risk of harm to Plaintiffs' property.

179. Defendants have intentionally failed to eliminate the risk of harm caused by their handling, storing, and/or disposing of radioactive waste.

180. As a direct result of Defendants' abnormally dangerous activities, Plaintiffs' property was contaminated with radioactive materials and they suffered and continue to suffer injury, including diminished property value. Such contamination is incompatible with the normal use and enjoyment of Plaintiffs' Property.

181. Plaintiffs' injuries are of the kinds that result from the dangerous nature of handling, storing, and/or disposing of radioactive waste.

182. The injuries that Defendants' handling, storing, and/or disposing of radioactive waste have caused Plaintiffs to suffer, drastically outweigh the value of the Landfill.

183. Accordingly, Defendants are jointly and severally liable for any and all damages Plaintiffs have sustained as a result of their strict liability for handling, storing and/or disposing of radioactive materials, including, without limitation, any incidental or consequential damages.

**COUNT VII – INJUNCTIVE RELIEF
(brought individually and on behalf of the Class)**

184. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

185. Defendants have tortiously contaminated Plaintiffs' property with hazardous, toxic, carcinogenic, radioactive wastes.

186. The Defendants' tortious acts threaten the safety and normal use and enjoyment of the Plaintiffs' property.

187. The radioactive contamination of Plaintiffs' property has caused a significant increased risk to Plaintiffs, and therefore Plaintiffs are in need of a thorough scientific evaluation of the radioactive contaminant levels throughout the Property.

188. The need for such an evaluation is a direct consequence of the Defendants' tortious conduct, and does not arise from the innocent conduct of the homeowners.

189. Therefore, Plaintiffs seek injunctive and equitable relief to require the Defendants to conduct the necessary scientific evaluation their property, consistent with contemporary

scientific principles. Plaintiffs seek injunctive and equitable relief to require the Defendants to respond to the consequences of this tortious contamination by providing the necessary medical monitoring in the form of environmental testing, clean-up, and medical tests as indicated by the results of the scientific evaluation.

190. Plaintiffs seek this injunctive and equitable relief either in the form of an injunction requiring the Defendants to conduct the necessary monitoring themselves, or in the form of a court-ordered and court-supervised fund (with a court-appointed trustee if the court deems that appropriate) to provide for the necessary monitoring.

191. Such injunctive and equitable relief will decrease the radioactive contamination risks of Plaintiffs' Property, decrease the interference with the use and enjoyment of said property, and further mitigate Plaintiffs' damages.

**COUNT VIII – CIVIL CONSPIRACY
(brought individually and on behalf of the Class)**

192. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

193. Defendants wrongfully and fraudulently agreed and conspired together to injure Plaintiffs and members of the Class, by wrongfully releasing radioactive wastes, as more fully alleged herein.

194. Defendants wrongfully and fraudulently agreed and conspired together to take the actions alleged herein giving rise to causes of action for nuisance, trespass, negligence, negligence per se, strict/absolute liability, injunctive relief, and punitive damages as alleged herein.

195. As result of the conspiracy of the Defendants, Plaintiffs and members of the Class have suffered damages, as more fully alleged herein.

**COUNT IX – PUNITIVE DAMAGES
(brought individually and on behalf of the Class)**

196. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

197. Defendants committed one or more of the willful, wanton, malicious, reckless, and outrageous acts more fully set forth above which individually or cumulatively justify the award of punitive damages in this matter.

198. Defendants knew or had information from which, in the exercise of ordinary care, should have known that such conduct, as detailed above, created a high degree of probability of injury to Plaintiffs and others similarly situated.

199. The willful, wanton, malicious, reckless, and outrageous acts of Defendants, as detailed above, evidence Defendants' complete indifference to and/or conscious disregard for the safety of Plaintiffs, and others similarly situated.

PRAYER FOR RELIEF

WHEREFORE, as to each Count, and all Counts, Plaintiffs pray for judgment in favor of Plaintiffs and Class and against Defendants Bridgeton Landfill, LLC, Republic Services, Inc., Allied Services, L.L.C., and Rock Road Industries, Inc., as well as awarding the following to Plaintiffs and against Defendants:

- a. an award of actual, general, special, incidental, statutory, compensatory and consequential damages in an amount to be proven at trial, including compensatory

damages for the loss and use of enjoyment of Plaintiffs' property; annoyance and discomfort; damage to Plaintiffs' personal property; the diminution in the market value of Plaintiffs' property; as well as the costs and expenses incurred as a result of Plaintiffs' exposure to radioactive emissions, including costs of remediation and relocation;

- b. an award of double damages for malicious trespass as provided for under Mo. Rev. Stat. § 537.330;
- c. an award of punitive and exemplary damages as fair and reasonable in an amount sufficient to punish Defendants and to deter similar conduct in the future;
- d. costs and attorney fees;
- e. interest on the above amounts as allowed by law, including but not limited to pre- and post-judgement interest;
- f. for appropriate injunctive and equitable relief, permitted by law or equity including a preliminary and/or permanent injunction enjoining Defendants from continuing the unlawful conduct as set forth herein and directing Defendants to identify, with Court supervision, members of the Class in order to compensate them and to clean up all contamination, and including medical monitoring; and
- g. for any further relief this Court deems just and proper.

Respectfully submitted,

KEANE LAW LLC

/s/ Ryan A. Keane

Ryan A. Keane, # 62112
Alex Braitberg, # 67045
7777 Bonhomme Ave., Ste. 1600
St. Louis, MO 63105
Phone: (314) 391-4700
Fax: (314) 244-3778
ryan@keanelawllc.com
alex@keanelawllc.com

JOHNSON GRAY, LLC
Anthony D. Gray, # 51534
319 North 4th Street, Suite 212
St. Louis, MO 63102
Phone: (314) 385-9500
agray@johnsongraylaw.com

COOPER LAW FIRM, L.L.C.
Barry J. Cooper, Jr., TX Bar # 24057527 *pro hac vice*
forthcoming
Celeste Brustowicz, LA Bar # 16835 *pro hac vice*
forthcoming
508 St. Philip Street
New Orleans, LA 70116
Phone: (504) 566-1558
bcooper@sch-llc.com
cbrustowicz@sch-llc.com

and

RON AUSTIN & ASSOCIATES, L.L.C.
Ron A. Austin. LA Bar # 23630, *pro hac vice*
forthcoming
920 4th Street
Gretna, Louisiana 70053
Phone: (504) 227-8100
Fax: (504) 227-8122
raustin@austin-associates.net

Attorneys for Plaintiffs and proposed Class

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 2, 2018, a true and accurate copy of the foregoing was served by filing it in the court's electronic filing system, which will provide electronic notice to all parties and attorneys of record.

/s/ Ryan A. Keane



Judge or Division: MAURA B MCSHANE	Case Number: 18SL-CC00613
Plaintiff/Petitioner: JOHN KITCHIN JR	Plaintiff's/Petitioner's Attorney/Address RYAN A. KEANE 7777 Bonhomme Ave. SUITE 1600 ST LOUIS, MO 63105
Defendant/Respondent: BRIDGETON LANDFILL, LLC	vs. Court Address: ST LOUIS COUNTY COURT BUILDING 105 SOUTH CENTRAL AVENUE CLAYTON, MO 63105
Nature of Suit: CC Other Miscellaneous Actions	(Date File Stamp)

Summons in Civil Case

The State of Missouri to: ALLIED SERVICES, LLC
Alias:
 R/A: CT CORPORATION COMPANY
 120 S CENTRAL AVE
 CLAYTON, MO 63105

COURT SEAL OF

ST. LOUIS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

19-MAR-2018
 Date

Joan J. Salamey
 Clerk

Further Information:
 JJ

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within thirty days after the date of issue. I certify that I have served the above summons by: (check one)

delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.
 leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with _____ a person of the Defendant's/Respondent's family over the age of 15 years.
 (for service on a corporation) delivering a copy of the summons and a copy of the petition to _____ (name) _____ (title).
 other _____

Served at _____ (address)
 in _____ (County/City of St. Louis), MO, on _____ (date) at _____ (time).

 Printed Name of Sheriff or Server

 Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:
 (Seal) Subscribed and sworn to before me on _____ (date).
 My commission expires: _____ Date _____ Notary Public

Sheriff's Fees, if applicable

Summons	\$ _____
Non Est	\$ _____
Sheriff's Deputy Salary	\$ _____
Supplemental Surcharge	\$ <u>10.00</u>
Mileage	\$ _____ (_____ miles @ \$. _____ per mile)
Total	\$ _____

A copy of the summons and a copy of the petition must be served on **each** Defendant/Respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

AFFIDAVIT OF SERVICE

Case: 18SL-CC00613	Court: 21ST JUDICIAL CIRCUIT COURT	County: ST LOUIS, MO	Job: 2131210
Plaintiff / Petitioner: JOHN KITCHIN JR		Defendant / Respondent: BRIDGETON LANDFILL LLC	
Received by: MISSOURI PROCESS SERVING, LLC		For: KEANE LAW LLC	
To be served upon: ALLIED SERVICES LLC C/O CT CORPORATION SYSTEM - BONNIE LOVE - CORPORATE INTAKE SPECIALIST			

I, Jose Pineiro, being duly sworn, depose and say: I am over the age of 18 years and not a party to this action, and that within the boundaries of the State where service was effected, I was authorized by law to make service of the documents and informed the said person of the contents herein.

I have served the attached documents by:

- delivering a copy of the service documents to the Defendant.
- leaving a copy of the service documents at the dwelling place or usual abode of the Defendant with the person identified below, who is a person over the age of 15 years.
- (for service on a corporation) delivering a copy of the service documents to the person identified below.
- Documents could not be served due to lack of contact with the subject.

SERVED IN ST LOUIS COUNTY AND IN THE STATE OF MO.

Recipient Name / Address: ALLIED SERVICES LLC C/O CT CORPORATION SYSTEM - BONNIE LOVE - CORPORATE INTAKE SPECIALIST, COMPANY: 120 S CENTRAL AVE, SAINT LOUIS, MO 63105

Manner of Service: Authorized, Mar 29, 2018, 9:36 am CDT

Documents: SUMMONS, PETITION (Received Mar 26, 2018 at 9:00am CDT)

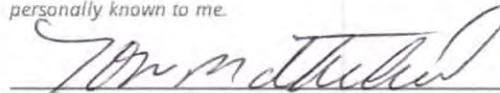
Additional Comments:

1) Successful Attempt: Mar 29, 2018, 9:36 am CDT at COMPANY: 120 S CENTRAL AVE, SAINT LOUIS, MO 63105 received by ALLIED SERVICES LLC C/O CT CORPORATION SYSTEM - BONNIE LOVE - CORPORATE INTAKE SPECIALIST. Age: 40; Ethnicity: Caucasian; Gender: Female; Weight: 165; Height: 5'6"; Hair: Black; Eyes: Brown;


 JOSE PINEIRO
 IL PERC - 129.352771, MO PI LIC
 201200158, ST LOUIS PROCESS SERVER
 ID 555, JACKSON COUNTY MO - PPS18-0432

3-29-18
Date

Subscribed and sworn to before me by the affiant who is personally known to me.


 Notary Public
 3-29-18 9-8-21
 Date Commission Expires

MISSOURI PROCESS SERVING, LLC
 1430 Washington Ave Suite 220
 St Louis, MO 63103
 314-825-5512





IN THE 21ST JUDICIAL CIRCUIT COURT, ST. LOUIS COUNTY, MISSOURI

Judge or Division: MAURA B MCSHANE	Case Number: 18SL-CC00613
Plaintiff/Petitioner: JOHN KITCHIN JR	Plaintiff's/Petitioner's Attorney/Address RYAN A. KEANE 7777 Bonhomme Ave. SUITE 1600 ST LOUIS, MO 63105
Defendant/Respondent: BRIDGETON LANDFILL, LLC	Court Address: ST LOUIS COUNTY COURT BUILDING 105 SOUTH CENTRAL AVENUE CLAYTON, MO 63105
Nature of Suit: CC Other Miscellaneous Actions	(Date File Stamp)

Summons in Civil Case

The State of Missouri to: BRIDGETON LANDFILL, LLC
 Alias:
 R/A: THE CORPORATION COMPANY
 120 S CENTRAL AVE
 CLAYTON, MO 63105

COURT SEAL OF

 ST. LOUIS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

19-MAR-2018
 Date

Joan P. Delaney
 Clerk

Further Information:
 JJ

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within thirty days after the date of issue.

I certify that I have served the above summons by: (check one)

delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.
 leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with _____ a person of the Defendant's/Respondent's family over the age of 15 years.
 (for service on a corporation) delivering a copy of the summons and a copy of the petition to _____ (name) _____ (title).
 other _____.

Served at _____ (address)
 in _____ (County/City of St. Louis), MO, on _____ (date) at _____ (time).

 Printed Name of Sheriff or Server

 Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:
 Subscribed and sworn to before me on _____ (date).
 My commission expires: _____ Date _____ Notary Public

Sheriff's Fees, if applicable

Summons \$ _____
 Non Est \$ _____
 Sheriff's Deputy Salary
 Supplemental Surcharge \$ 10.00
 Mileage \$ _____ (_____ miles @ \$ _____ per mile)
 Total \$ _____

A copy of the summons and a copy of the petition must be served on each Defendant/Respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.



IN THE 21ST JUDICIAL CIRCUIT COURT, ST. LOUIS COUNTY, MISSOURI

Judge or Division: MAURA B MCSHANE	Case Number: 18SL-CC00613
Plaintiff/Petitioner: JOHN KITCHIN JR	Plaintiff's/Petitioner's Attorney/Address RYAN A. KEANE 7777 Bonhomme Ave. SUITE 1600 ST LOUIS, MO 63105
Defendant/Respondent: BRIDGETON LANDFILL, LLC	Court Address: ST LOUIS COUNTY COURT BUILDING 105 SOUTH CENTRAL AVENUE CLAYTON, MO 63105
Nature of Suit: CC Other Miscellaneous Actions	(Date File Stamp)

Summons in Civil Case

The State of Missouri to: **ROCK ROAD INDUSTRIES, INC.**
 Alias:
 R/A: CT CORPORATION COMPANY
 120 S CENTRAL AVE
 CLAYTON, MO 63105

COURT SEAL OF

 ST. LOUIS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

19-MAR-2018
 Date

Joan P. Delaney
 Clerk

Further Information:
 JJ

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within thirty days after the date of issue.

I certify that I have served the above summons by: (check one)

delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.

leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with _____ a person of the Defendant's/Respondent's family over the age of 15 years.

(for service on a corporation) delivering a copy of the summons and a copy of the petition to _____ (name) _____ (title).

other _____

Served at _____ (address)
 in _____ (County/City of St. Louis), MO, on _____ (date) at _____ (time).

 Printed Name of Sheriff or Server

 Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

(Seal) Subscribed and sworn to before me on _____ (date).

My commission expires: _____ Date _____ Notary Public

Sheriff's Fees, if applicable

Summons \$ _____

Non Est \$ _____

Sheriff's Deputy Salary

Supplemental Surcharge \$ 10.00

Mileage \$ _____ (_____ miles @ \$. _____ per mile)

Total \$ _____

A copy of the summons and a copy of the petition must be served on **each** Defendant/Respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

AFFIDAVIT OF SERVICE

Case: 18SL-CC00613	Court: 21ST JUDICIAL CIRCUIT COURT	County: ST LOUIS, MO	Job: 2131182
Plaintiff / Petitioner: JOHN KITCHIN JR		Defendant / Respondent: BRIDGETON LANDFILL LLC	
Received by: MISSOURI PROCESS SERVING, LLC		For: KEANE LAW LLC	
To be served upon: ROCK ROAD INDUSTRIES INC C/O CT CORPORATION SYSTEM - BONNIE LOVE - CORPORATE INTAKE SPECIALIST			

I, Jose PINEIRO, , being duly sworn, depose and say: I am over the age of 18 years and not a party to this action, and that within the boundaries of the State where service was effected, I was authorized by law to make service of the documents and informed the said person of the contents herein.

I have served the attached documents by:

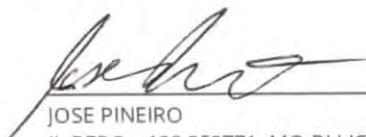
- delivering a copy of the service documents to the Defendant.
- leaving a copy of the service documents at the dwelling place or usual abode of the Defendant with the person identified below, who is a person over the age of 15 years.
- (for service on a corporation) delivering a copy of the service documents to the person identified below.
- Documents could not be served due to lack of contact with the subject.

SERVED IN ST LOUIS COUNTY AND IN THE STATE OF MO.

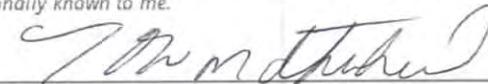
Recipient Name / Address: ROCK ROAD INDUSTRIES INC C/O CT CORPORATION SYSTEM - BONNIE LOVE - CORPORATE INTAKE SPECIALIST, COMPANY: 120 S CENTRAL AVE, SAINT LOUIS, MO 63105
Manner of Service: Authorized, Mar 29, 2018, 9:36 am CDT
Documents: SUMMONS, PETITION (Received Mar 26, 2018 at 9:00am CDT)

Additional Comments:

1) Successful Attempt: Mar 29, 2018, 9:36 am CDT at COMPANY: 120 S CENTRAL AVE, SAINT LOUIS, MO 63105 received by ROCK ROAD INDUSTRIES INC C/O CT CORPORATION SYSTEM - BONNIE LOVE - CORPORATE INTAKE SPECIALIST. Age: 40; Ethnicity: Caucasian; Gender: Female; Weight: 165; Height: 5'6"; Hair: Black; Eyes: Brown;


 JOSE PINEIRO
 IL PERC - 129.352771, MO PI LIC
 201200158, ST LOUIS PROCESS SERVER
 ID 555, JACKSON COUNTY MO - PPS18-0432
 Date 3-29-18

Subscribed and sworn to before me by the affiant who is personally known to me.


 Notary Public
 Date 3-29-18 Commission Expires 9-8-21

MISSOURI PROCESS SERVING, LLC
 1430 Washington Ave Suite 220
 St Louis, MO 63103
 314-825-5512





IN THE 21ST JUDICIAL CIRCUIT COURT, ST. LOUIS COUNTY, MISSOURI

Judge or Division: MAURA B MCSHANE	Case Number: 18SL-CC00613
Plaintiff/Petitioner: JOHN KITCHIN JR	Plaintiff's/Petitioner's Attorney/Address: RYAN A. KEANE 7777 Bonhomme Ave. SUITE 1600 ST LOUIS, MO 63105
Defendant/Respondent: BRIDGETON LANDFILL, LLC	Court Address: ST LOUIS COUNTY COURT BUILDING 105 SOUTH CENTRAL AVENUE CLAYTON, MO 63105
Nature of Suit: CC Other Miscellaneous Actions	(Date File Stamp)

**Summons for Personal Service Outside the State of Missouri
(Except Attachment Action)**

The State of Missouri to: **REPUBLIC SERVICES, INC.**
Alias:
R/A: CT CORPORATION SYSTEM
3800 N CENTRAL AVE SUITE 460
PHOENIX, AZ 85012

COURT SEAL OF

ST. LOUIS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, copy of which is attached, and to serve a copy of your pleading upon the attorney for the Plaintiff/Petitioner at the above address all within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to file your pleading, judgment by default will be taken against you for the relief demanded in this action.

19-MAR-2018
Date
Further Information:
JJ

James P. Delaney
Clerk

Officer's or Server's Affidavit of Service

I certify that:

- I am authorized to serve process in civil actions within the state or territory where the above summons was served.
- My official title is _____ of _____ County, _____ (state).
- I have served the above summons by: (check one)
 - delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.
 - leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with _____, a person of the Defendant's/Respondent's family over the age of 15 years.
 - (for service on a corporation) delivering a copy of the summons and a copy of the petition to _____ (name) _____ (title).
 - other (describe) _____.

Served at _____ (address)
in _____ County, _____ (state), on _____ (date) at _____ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Subscribed and Sworn To me before this _____ (day) _____ (month) _____ (year)

- I am: (check one)
- the clerk of the court of which affiant is an officer.
 - the judge of the court of which affiant is an officer.
 - authorized to administer oaths in the state in which the affiant served the above summons. (use for out-of-state officer)
 - authorized to administer oaths. (use for court-appointed server)

(Seal)

Signature and Title

Service Fees, if applicable

Summons \$ _____
Non Est \$ _____
Mileage \$ _____ (_____ miles @ \$ _____ per mile)
Total \$ _____

See the following page for directions to clerk and to officer making return on service of summons.

AFFIDAVIT OF SERVICE

State of Missouri

County of Saint Louis

In the 21st Judicial Circuit Court

Case Number: 18SL-CC00613

Plaintiff:

JOHN KITCHIN, JR and NORTH WEST AUTO BODY COMPANY, on behalf of themselves and all others similarly situated

vs.

Defendant:

BRIDGETON LANDFILL, LLC

For:

Keane Law, LLC
7777 Bonhomme Ave. Ste. 1600
St. Louis, MO 63105

Received by Maricopa County Process Service, PLLC on the 27th day of March, 2018 at 12:23 pm to be served on **REPUBLIC SERVICES, INC, c/o CT Corporation System, 3800 N. Central Ave. Ste. 250, Phoenix, AZ 85012.**

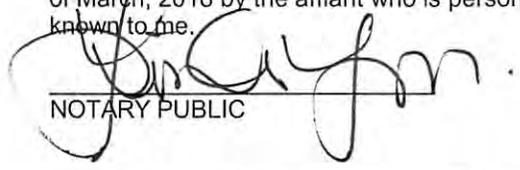
I, Gregory M Urroz, Process Server, being duly sworn, depose and say that on the **28th day of March, 2018 at 11:04 am, I:**

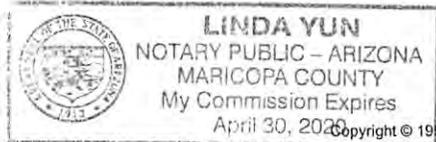
served a **REGISTERED AGENT** by delivering a true copy of the **SUMMONS FOR PERSONAL SERVICE OUTSIDE THE STATE OF MISSOURI and JURY TRIAL DEMANDED** to: **Jaquelynn O'Campo** as a **CSR, a person authorized to accept service** at the address of: **3800 N. Central Ave. Ste. 250, Phoenix, AZ 85012** on behalf of **REPUBLIC SERVICES, INC**, and informed said person of the contents therein, in compliance with state statutes.

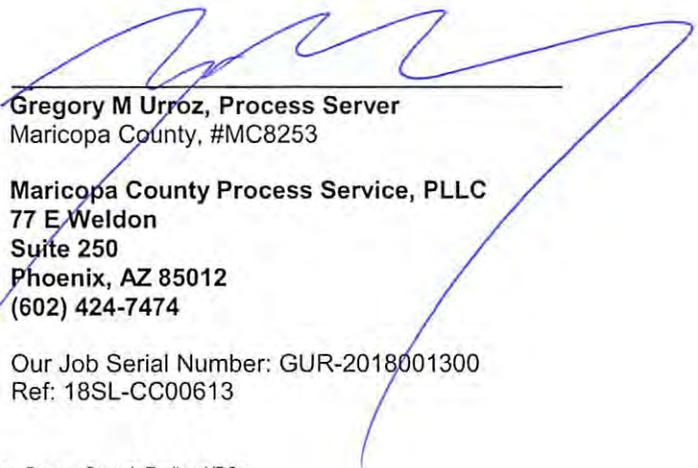
Description of Person Served: Age: 25, Sex: F, Race/Skin Color: Hispanic, Height: 5'10", Weight: 165, Hair: Light Brown, Glasses: N

I certify that I am over the age of 18, have no interest in the above action, and am a Certified Process Server, in good standing, in the judicial circuit in which the process was served.

Subscribed and Sworn to before me on the 29th day of March, 2018 by the affiant who is personally known to me.


NOTARY PUBLIC





Gregory M Urroz, Process Server
Maricopa County, #MC8253

Maricopa County Process Service, PLLC
77 E Weldon
Suite 250
Phoenix, AZ 85012
(602) 424-7474

Our Job Serial Number: GUR-2018001300
Ref: 18SL-CC00613



Judge or Division: MAURA B MCSHANE	Case Number: 18SL-CC00613
Plaintiff/Petitioner: JOHN KITCHIN JR	Plaintiff's/Petitioner's Attorney/Address RYAN A. KEANE 7777 Bonhomme Ave. SUITE 1600 ST LOUIS, MO 63105
Defendant/Respondent: BRIDGETON LANDFILL, LLC	vs. Court Address: ST LOUIS COUNTY COURT BUILDING 105 SOUTH CENTRAL AVENUE CLAYTON, MO 63105
Nature of Suit: CC Other Miscellaneous Actions	(Date File Stamp)

Summons in Civil Case

The State of Missouri to: ALLIED SERVICES, LLC
Alias:
 R/A: CT CORPORATION COMPANY
 120 S CENTRAL AVE
 CLAYTON, MO 63105

COURT SEAL OF

ST. LOUIS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

19-MAR-2018
Date

Joan J. Salamey
Clerk

Further Information:
JJ

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within thirty days after the date of issue. I certify that I have served the above summons by: (check one)

delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.

leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with _____ a person of the Defendant's/Respondent's family over the age of 15 years.

(for service on a corporation) delivering a copy of the summons and a copy of the petition to _____ (name) _____ (title).

other _____

Served at _____ (address)
 in _____ (County/City of St. Louis), MO, on _____ (date) at _____ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

(Seal) Subscribed and sworn to before me on _____ (date).
 My commission expires: _____ Date _____ Notary Public

Sheriff's Fees, if applicable

Summons	\$ _____
Non Est	\$ _____
Sheriff's Deputy Salary	\$ _____
Supplemental Surcharge	\$ <u>10.00</u>
Mileage	\$ _____ (_____ miles @ \$. _____ per mile)
Total	\$ _____

A copy of the summons and a copy of the petition must be served on **each** Defendant/Respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.



IN THE 21ST JUDICIAL CIRCUIT COURT, ST. LOUIS COUNTY, MISSOURI

Judge or Division: MAURA B MCSHANE	Case Number: 18SL-CC00613
Plaintiff/Petitioner: JOHN KITCHIN JR	Plaintiff's/Petitioner's Attorney/Address RYAN A. KEANE 7777 Bonhomme Ave. SUITE 1600 ST LOUIS, MO 63105
Defendant/Respondent: BRIDGETON LANDFILL, LLC	Court Address: ST LOUIS COUNTY COURT BUILDING 105 SOUTH CENTRAL AVENUE CLAYTON, MO 63105
Nature of Suit: CC Other Miscellaneous Actions	(Date File Stamp)

Summons in Civil Case

The State of Missouri to: BRIDGETON LANDFILL, LLC
 Alias:
 R/A: THE CORPORATION COMPANY
 120 S CENTRAL AVE
 CLAYTON, MO 63105

COURT SEAL OF

 ST. LOUIS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

19-MAR-2018
 Date

Joan P. Delaney
 Clerk

Further Information:
 JJ

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within thirty days after the date of issue.

I certify that I have served the above summons by: (check one)

delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.

leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with _____ a person of the Defendant's/Respondent's family over the age of 15 years.

(for service on a corporation) delivering a copy of the summons and a copy of the petition to _____ (name) _____ (title).

other _____.

Served at _____ (address)
 in _____ (County/City of St. Louis), MO, on _____ (date) at _____ (time).

 Printed Name of Sheriff or Server

 Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

(Seal) Subscribed and sworn to before me on _____ (date).

My commission expires: _____ Date _____ Notary Public

Sheriff's Fees, if applicable

Summons \$ _____

Non Est \$ _____

Sheriff's Deputy Salary

Supplemental Surcharge \$ 10.00

Mileage \$ _____ (_____ miles @ \$ _____ per mile)

Total \$ _____

A copy of the summons and a copy of the petition must be served on each Defendant/Respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.



IN THE 21ST JUDICIAL CIRCUIT COURT, ST. LOUIS COUNTY, MISSOURI

Judge or Division: MAURA B MCSHANE	Case Number: 18SL-CC00613
Plaintiff/Petitioner: JOHN KITCHIN JR	Plaintiff's/Petitioner's Attorney/Address: RYAN A. KEANE 7777 Bonhomme Ave. SUITE 1600 ST LOUIS, MO 63105
Defendant/Respondent: BRIDGETON LANDFILL, LLC	Court Address: ST LOUIS COUNTY COURT BUILDING 105 SOUTH CENTRAL AVENUE CLAYTON, MO 63105
Nature of Suit: CC Other Miscellaneous Actions	(Date File Stamp)

**Summons for Personal Service Outside the State of Missouri
(Except Attachment Action)**

The State of Missouri to: **REPUBLIC SERVICES, INC.**
 Alias:
 R/A: CT CORPORATION SYSTEM
 3800 N CENTRAL AVE SUITE 460
 PHOENIX, AZ 85012

COURT SEAL OF

 ST. LOUIS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, copy of which is attached, and to serve a copy of your pleading upon the attorney for the Plaintiff/Petitioner at the above address all within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to file your pleading, judgment by default will be taken against you for the relief demanded in this action.

19-MAR-2018
 Date
 Further Information:
 JJ

James P. Delaney
 Clerk

Officer's or Server's Affidavit of Service

I certify that:

- I am authorized to serve process in civil actions within the state or territory where the above summons was served.
- My official title is _____ of _____ County, _____ (state).
- I have served the above summons by: (check one)
 - delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.
 - leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with _____, a person of the Defendant's/Respondent's family over the age of 15 years.
 - (for service on a corporation) delivering a copy of the summons and a copy of the petition to _____ (name) _____ (title).
 - other (describe) _____.

Served at _____ (address)
 in _____ County, _____ (state), on _____ (date) at _____ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Subscribed and Sworn To me before this _____ (day) _____ (month) _____ (year)

- I am: (check one)
- the clerk of the court of which affiant is an officer.
 - the judge of the court of which affiant is an officer.
 - authorized to administer oaths in the state in which the affiant served the above summons. (use for out-of-state officer)
 - authorized to administer oaths. (use for court-appointed server)

(Seal)

Signature and Title

Service Fees, if applicable

Summons \$ _____
 Non Est \$ _____
 Mileage \$ _____ (_____ miles @ \$ _____ per mile)
Total \$ _____

See the following page for directions to clerk and to officer making return on service of summons.

AFFIDAVIT OF SERVICE

State of Missouri

County of Saint Louis

In the 21st Judicial Circuit Court

Case Number: 18SL-CC00613

Plaintiff:

JOHN KITCHIN, JR and NORTH WEST AUTO BODY COMPANY, on behalf of themselves and all others similarly situated

vs.

Defendant:

BRIDGETON LANDFILL, LLC

For:

Keane Law, LLC
7777 Bonhomme Ave. Ste. 1600
St. Louis, MO 63105

Received by Maricopa County Process Service, PLLC on the 27th day of March, 2018 at 12:23 pm to be served on **REPUBLIC SERVICES, INC, c/o CT Corporation System, 3800 N. Central Ave. Ste. 250, Phoenix, AZ 85012.**

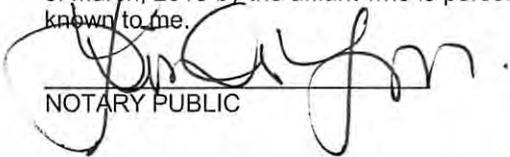
I, Gregory M Urroz, Process Server, being duly sworn, depose and say that on the **28th day of March, 2018 at 11:04 am, I:**

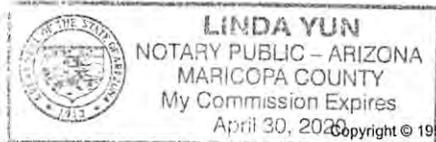
served a **REGISTERED AGENT** by delivering a true copy of the **SUMMONS FOR PERSONAL SERVICE OUTSIDE THE STATE OF MISSOURI and JURY TRIAL DEMANDED** to: **Jaquelynn O'Campo** as a **CSR, a person authorized to accept service** at the address of: **3800 N. Central Ave. Ste. 250, Phoenix, AZ 85012** on behalf of **REPUBLIC SERVICES, INC**, and informed said person of the contents therein, in compliance with state statutes.

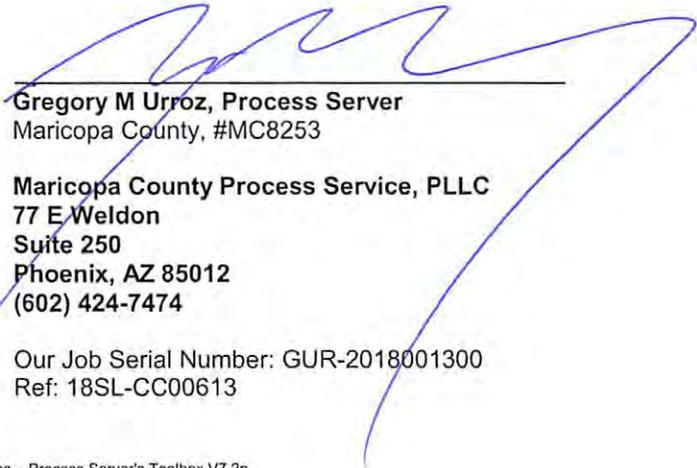
Description of Person Served: Age: 25, Sex: F, Race/Skin Color: Hispanic, Height: 5'10", Weight: 165, Hair: Light Brown, Glasses: N

I certify that I am over the age of 18, have no interest in the above action, and am a Certified Process Server, in good standing, in the judicial circuit in which the process was served.

Subscribed and Sworn to before me on the 29th day of March, 2018 by the affiant who is personally known to me.


NOTARY PUBLIC





Gregory M Urroz, Process Server
Maricopa County, #MC8253

Maricopa County Process Service, PLLC
77 E Weldon
Suite 250
Phoenix, AZ 85012
(602) 424-7474

Our Job Serial Number: GUR-2018001300
Ref: 18SL-CC00613



IN THE 21ST JUDICIAL CIRCUIT COURT, ST. LOUIS COUNTY, MISSOURI

Judge or Division: MAURA B MCSHANE	Case Number: 18SL-CC00613
Plaintiff/Petitioner: JOHN KITCHIN JR	Plaintiff's/Petitioner's Attorney/Address: RYAN A. KEANE 7777 Bonhomme Ave. SUITE 1600 ST LOUIS, MO 63105
Defendant/Respondent: BRIDGETON LANDFILL, LLC	Court Address: ST LOUIS COUNTY COURT BUILDING 105 SOUTH CENTRAL AVENUE CLAYTON, MO 63105
Nature of Suit: CC Other Miscellaneous Actions	(Date File Stamp)

Summons in Civil Case

The State of Missouri to: **ROCK ROAD INDUSTRIES, INC.**
 Alias:
 R/A: CT CORPORATION COMPANY
 120 S CENTRAL AVE
 CLAYTON, MO 63105

COURT SEAL OF

 ST. LOUIS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

19-MAR-2018
 Date

[Signature]
 Clerk

Further Information:
 JJ

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within thirty days after the date of issue.

I certify that I have served the above summons by: (check one)

delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.

leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with _____ a person of the Defendant's/Respondent's family over the age of 15 years.

(for service on a corporation) delivering a copy of the summons and a copy of the petition to _____ (name) _____ (title).

other _____

Served at _____ (address)
 in _____ (County/City of St. Louis), MO, on _____ (date) at _____ (time).

 Printed Name of Sheriff or Server

 Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:
 (Seal) Subscribed and sworn to before me on _____ (date).
 My commission expires: _____ Date _____ Notary Public

Sheriff's Fees, if applicable

Summons \$ _____

Non Est \$ _____

Sheriff's Deputy Salary

Supplemental Surcharge \$ 10.00

Mileage \$ _____ (_____ miles @ \$ _____ per mile)

Total \$ _____

A copy of the summons and a copy of the petition must be served on each Defendant/Respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

AFFIDAVIT OF SERVICE

Case: 18SL-CC00613	Court: 21ST JUDICIAL CIRCUIT COURT	County: ST LOUIS, MO	Job: 2131182
Plaintiff / Petitioner: JOHN KITCHIN JR		Defendant / Respondent: BRIDGETON LANDFILL LLC	
Received by: MISSOURI PROCESS SERVING, LLC		For: KEANE LAW LLC	
To be served upon: ROCK ROAD INDUSTRIES INC C/O CT CORPORATION SYSTEM - BONNIE LOVE - CORPORATE INTAKE SPECIALIST			

I, Jose PINEIRO, being duly sworn, depose and say: I am over the age of 18 years and not a party to this action, and that within the boundaries of the State where service was effected, I was authorized by law to make service of the documents and informed the said person of the contents herein.

I have served the attached documents by:

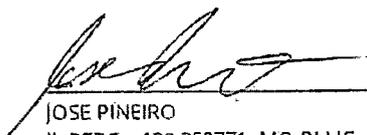
- delivering a copy of the service documents to the Defendant.
- leaving a copy of the service documents at the dwelling place or usual abode of the Defendant with the person identified below, who is a person over the age of 15 years.
- (for service on a corporation) delivering a copy of the service documents to the person identified below.
- Documents could not be served due to lack of contact with the subject.

SERVED IN ST LOUIS COUNTY AND IN THE STATE OF MO.

Recipient Name / Address: ROCK ROAD INDUSTRIES INC C/O CT CORPORATION SYSTEM - BONNIE LOVE - CORPORATE INTAKE SPECIALIST, COMPANY: 120 S CENTRAL AVE, SAINT LOUIS, MO 63105
 Manner of Service: Authorized, Mar 29, 2018, 9:36 am CDT
 Documents: SUMMONS, PETITION (Received Mar 26, 2018 at 9:00am CDT)

Additional Comments:

1) Successful Attempt: Mar 29, 2018, 9:36 am CDT at COMPANY: 120 S CENTRAL AVE, SAINT LOUIS, MO 63105 received by ROCK ROAD INDUSTRIES INC C/O CT CORPORATION SYSTEM - BONNIE LOVE - CORPORATE INTAKE SPECIALIST. Age: 40; Ethnicity: Caucasian; Gender: Female; Weight: 165; Height: 5'6"; Hair: Black; Eyes: Brown;


 JOSE PINEIRO
 IL PERC - 129.352771, MO P LIC
 201200158, ST LOUIS PROCESS SERVER
 ID 555, JACKSON COUNTY MO - PPS18-0432

3-29-18
 Date

Subscribed and sworn to before me by the affiant who is personally known to me.


 Notary Public
 3-29-18
 Date
 9-8-21
 Commission Expires

MISSOURI PROCESS SERVING, LLC
 1430 Washington Ave Suite 220
 St Louis, MO 63103
 314-825-5512



**TWENTY-FIRST JUDICIAL CIRCUIT OF THE STATE OF MISSOURI
ST. LOUIS COUNTY**

**JOHN C. KITCHIN, JR., NORTH)
WEST AUTO BODY COMPANY, and)
MARY MENKE, on behalf of themselves and)
all others similarly situated,)**

Plaintiffs,)

vs.)

**BRIDGETON LANDFILL, LLC,)
REPUBLIC SERVICES, INC.,)
ALLIED SERVICES, LLC, and)
ROCK ROAD INDUSTRIES, INC.,)**

Defendants.)

Cause No. 18SL-CC00613

Division No. 2

**MOTION FOR *PRO HAC VICE* ADMISSION OF
CATHERINE HILTON**

Pursuant to Rule 9.03 of the Missouri Supreme Court Rules, the undersigned respectfully moves this court to permit Catherine Hilton to practice specially in this Court in this case as attorney of record for Plaintiffs John C. Kitchin, Jr., North West Auto Body Company, and Mary Menke, on behalf of themselves and all others similarly situated, to participate in the trial, proceedings and hearings herein. In support of this Motion, movant states:

1. Catherine Hilton is an attorney licensed to practice law and a member of the firm of Ron Austin & Associates. L.L.C, 920 4th street, Gretna, LA. 70053, telephone number (504) 227-8100.

2. Catherine Hilton and the law firm of Ron Austin & Associates, LLC have been retained by Plaintiffs to act as counsel in this matter. Catherine Hilton desires to be permitted to practice specially in this Court as counsel for Plaintiff in the above-styled cause.

3. Catherine Hilton is admitted to practice law in the State of Louisiana, admitted on April 20, 2001, the U.S. District Court for the Eastern and Middle District of Louisiana, admitted on May 2, 2012 and April 12, 2011. Catherine Hilton is currently licensed and in good standing to practice law in each jurisdiction to which she is admitted.

4. Neither Catherine Hilton nor any member of the firm of Ron Austin & Associates, LLC, with which Catherine Hilton practices, is under suspension or disbarment by any Court to which Catherine Hilton is admitted.

5. Catherine Hilton is familiar with the Missouri Supreme Court Rules and will at all times abide by and comply with those rules as counsel herein.

6. Ryan Keane of the law firm Keane Law LLC, 7777 Bonhomme Ave., Ste 1600, St. Louis, MO 63105, has agreed to act as associate counsel herein for Plaintiffs and to sponsor the motion for the *pro hac vice* admission of Catherine Hilton.

WHEREFORE, Ryan Keane respectfully requests that this court permit Catherine Hilton to practice specially in this case as attorney of record for Plaintiffs John C. Kitchin, Jr., North West Auto Body Company, and Mary Menke, on behalf of themselves and all others similarly situated and to participate in the trial, proceedings and hearings herein. A receipt for payment of *pro hac vice* fees is attached as Exhibit A. A proposed order is attached hereto as Exhibit B.

Dated: April 9, 2018

Respectfully submitted,

KEANE LAW LLC

By: /s/ Ryan Keane

Ryan A. Keane, # 62112
Alex Braitberg, # 67045
7777 Bonhomme Ave, Ste 1600
St. Louis, MO 63105
Ph: (314) 391-4700
Fx: (314) 244-3778
ryan@keanelawllc.com
alex@keanelawllc.com

JOHNSON GRAY, LLC
Anthony D. Gray, # 51534
319 North 4th Street, Suite 212
St. Louis, MO 63102
Phone: (314) 385- 9500
agray@johnsongraylaw.com

COOPER LAW FIRM, L.L.C
Barry J. Cooper, Jr., TX Bar # 24057527 *pro hac vice* forthcoming
Celeste Brustowicz, LA Bar # 16835 *pro hac vice* forthcoming
508 St. Phillip Street
New Orleans, LA 70116
Phone: (504) 566-1558
bcooper@sch-llc.com
cbrustowicz@sch-llc.com

and

RON AUSTIN & ASSOCIATES, L.L.C.
Ron A. Austin, LA Bar # 23630 *pro hac*
vice forthcoming
Catherine Hilton, LA Bar # 27238 *pro hac*
vice forthcoming
Lillian Williams, LA Bar # 37358 *pro hac*
vice forthcoming
920 4th Street
Gretna, Louisiana 70053
Telephone: (504) 227-8100
Facsimile: (504) 227-8122
raustin@ronaustinandassociates.com
chilton@ronaustinandassociates.com

Attorneys for Plaintiffs and Proposed Class

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 9, 2018, a true and accurate copy of the foregoing was served by filing it in the court's electronic filing system, which will provide electronic notice to all parties and attorneys of record.

/s/ Ryan Keane



**CLERK OF THE SUPREME COURT
STATE OF MISSOURI
POST OFFICE BOX 150
JEFFERSON CITY, MISSOURI
65102**

BETSY AUBUCHON
CLERK

TELEPHONE
(573) 751-4144

April 2, 2018

This will hereby acknowledge receipt of \$410 as required by Rule 6.01(m) for Catherine Hilton, appearing in John C. Kitchin, Jr. et al. v. Bridgeton Landfill, LLC, et al., Case No. 18SL-CC00613, before the Circuit Court of St. Louis County, State of Missouri.

A handwritten signature in cursive script that reads "Betsy AuBuchon".

Betsy AuBuchon, Clerk

**TWENTY-FIRST JUDICIAL CIRCUIT OF THE STATE OF MISSOURI
ST. LOUIS COUNTY**

**JOHN C. KITCHIN, JR., NORTH)
WEST AUTO BODY COMPANY, and)
MARY MENKE, on behalf of themselves and)
all others similarly situated,)**

Plaintiffs,

vs.

**BRIDGETON LANDFILL, LLC,)
REPUBLIC SERVICES, INC.,)
ALLIED SERVICES, LLC, and)
ROCK ROAD INDUSTRIES, INC.,)**

Defendants.

Cause No. 18SL-CC00613

Division No. 2

ORDER

Before the Court is the Motion for *Pro Hac Vice* Admission of Catherine Hilton filed on behalf of Plaintiffs John C. Kitchin, Jr., North West Auto Body Company, and Mary Menke, on behalf of themselves and all others similarly situated. Having considered the motion, the Court is of the opinion that the motion should be **GRANTED**. It is therefore **ORDERED** that Catherine Hilton is admitted *pro hac vice* in the above-styled matter.

Signed the _____ day of _____, 2018.

Judge, Circuit Court of St. Louis County

**TWENTY-FIRST JUDICIAL CIRCUIT OF THE STATE OF MISSOURI
ST. LOUIS COUNTY**

**JOHN C. KITCHIN, JR., NORTH)
WEST AUTO BODY COMPANY, and)
MARY MENKE, on behalf of themselves and)
all others similarly situated,)**

Plaintiffs,

vs.

**BRIDGETON LANDFILL, LLC,)
REPUBLIC SERVICES, INC.,)
ALLIED SERVICES, LLC, and)
ROCK ROAD INDUSTRIES, INC.,)**

Defendants.

Cause No. 18SL-CC00613

Division No. 2

**MOTION FOR *PRO HAC VICE* ADMISSION OF
RON AUSTIN**

Pursuant to Rule 9.03 of the Missouri Supreme Court Rules, the undersigned respectfully moves this court to permit Ron Austin to practice specially in this Court in this case as attorney of record for Plaintiffs John C. Kitchin, Jr., North West Auto Body Company, and Mary Menke, on behalf of themselves and all others similarly situated, to participate in the trial, proceedings and hearings herein. In support of this Motion, movant states:

1. Ron Austin is an attorney licensed to practice law and a member of the firm of Ron Austin & Associates. L.L.C, 920 4th street, Gretna, LA. 70053, telephone number (504) 227-8100.

2. Ron Austin and the law firm of Ron Austin & Associates, LLC have been retained by Plaintiffs to act as counsel in this matter. Ron Austin desires to be permitted to practice specially in this Court as counsel for Plaintiff in the above- styled cause.

3. Ron Austin is admitted to practice law in the State of Louisiana, admitted on October 6, 1995, the U.S. District Court for the Eastern, Middle, and Western District of Louisiana, admitted on September 18, 1996, August 14, 2006, and September 9, 2013. Ron Austin is currently licensed and in good standing to practice law in each jurisdiction to which he is admitted.

4. Neither Ron Austin nor any member of the firm of Ron Austin & Associates, LLC, with which Ron Austin practices, is under suspension or disbarment by any Court to which Ron Austin is admitted.

5. Ron Austin is familiar with the Missouri Supreme Court Rules and will at all times abide by and comply with those rules as counsel herein.

6. Ryan Keane of the law firm Keane Law LLC, 7777 Bonhomme Ave., Ste 1600, St. Louis, MO 63105, has agreed to act as associate counsel herein for Plaintiffs and to sponsor the motion for the *pro hac vice* admission of Ron Austin.

WHEREFORE, Ryan Keane respectfully requests that this court permit Ron Austin to practice specially in this case as attorney of record for Plaintiffs John C. Kitchin, Jr., North West Auto Body Company, and Mary Menke, on behalf of themselves and all others similarly situated and to participate in the trial, proceedings and hearings herein. A receipt for payment of *pro hac vice* fees is attached as Exhibit A. A proposed order is attached hereto as Exhibit B.

Dated: April 9, 2018

Respectfully submitted,

KEANE LAW LLC

By: /s/ Ryan Keane

Ryan A. Keane, # 62112
Alex Braitberg, # 67045
7777 Bonhomme Ave, Ste 1600
St. Louis, MO 63105
Ph: (314) 391-4700
Fx: (314) 244-3778
ryan@keanelawllc.com
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JOHNSON GRAY, LLC
Anthony D. Gray, # 51534
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COOPER LAW FIRM, L.L.C
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508 St. Phillip Street
New Orleans, LA 70116
Phone: (504) 566-1558
bcooper@sch-llc.com
cbrustowicz@sch-llc.com

and

RON AUSTIN & ASSOCIATES, L.L.C.
Ron A. Austin, LA Bar # 23630 *pro hac*
vice forthcoming
Catherine Hilton, LA Bar # 27238 *pro hac*
vice forthcoming
Lillian Williams, LA Bar # 37358 *pro hac*
vice forthcoming
920 4th Street
Gretna, Louisiana 70053
Telephone: (504) 227-8100
Facsimile: (504) 227-8122
raustin@ronaustinandassociates.com
chilton@ronaustinandassociates.com

Attorneys for Plaintiffs and Proposed Class

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 9, 2018, a true and accurate copy of the foregoing was served by filing it in the court's electronic filing system, which will provide electronic notice to all parties and attorneys of record.

/s/ Ryan Keane



**CLERK OF THE SUPREME COURT
STATE OF MISSOURI
POST OFFICE BOX 150
JEFFERSON CITY, MISSOURI
65102**

BETSY AUBUCHON
CLERK

TELEPHONE
(573) 751-4144

April 2, 2018

This will hereby acknowledge receipt of \$410 as required by Rule 6.01(m) for Ron A. Austin, appearing in John C. Kitchin, Jr. et al. v. Bridgeton Landfill, LLC, et al., Case No. 18SL-CC00613, before the Circuit Court of St. Louis County, State of Missouri.

A handwritten signature in black ink that reads "Betsy AuBuchon". The signature is written in a cursive style with a large, looping initial "B".

Betsy AuBuchon, Clerk

**TWENTY-FIRST JUDICIAL CIRCUIT OF THE STATE OF MISSOURI
ST. LOUIS COUNTY**

**JOHN C. KITCHIN, JR., NORTH)
WEST AUTO BODY COMPANY, and)
MARY MENKE, on behalf of themselves and)
all others similarly situated,)**

Plaintiffs,)

vs.)

**BRIDGETON LANDFILL, LLC,)
REPUBLIC SERVICES, INC.,)
ALLIED SERVICES, LLC, and)
ROCK ROAD INDUSTRIES, INC.,)**

Defendants.)

Cause No. 18SL-CC00613

Division No. 2

ORDER

Before the Court is the Motion for *Pro Hac Vice* Admission of Ron Austin filed on behalf of Plaintiffs John C. Kitchin, Jr., North West Auto Body Company, and Mary Menke, on behalf of themselves and all others similarly situated. Having considered the motion, the Court is of the opinion that the motion should be **GRANTED**. It is therefore **ORDERED** that Ron Austin is admitted *pro hac vice* in the above-styled matter.

Signed the _____ day of _____, 2018.

Judge, Circuit Court of St. Louis County

**TWENTY-FIRST JUDICIAL CIRCUIT OF THE STATE OF MISSOURI
ST. LOUIS COUNTY**

**JOHN C. KITCHIN, JR., NORTH)
WEST AUTO BODY COMPANY, and)
MARY MENKE, on behalf of themselves and)
all others similarly situated,)**

Plaintiffs,)

vs.)

**BRIDGETON LANDFILL, LLC,)
REPUBLIC SERVICES, INC.,)
ALLIED SERVICES, LLC, and)
ROCK ROAD INDUSTRIES, INC.,)**

Defendants.)

Cause No. 18SL-CC00613

Division No. 2

JURY TRIAL DEMANDED

FIRST AMENDED CLASS ACTION PETITION

COME NOW Plaintiffs John C. Kitchin, Jr., North West Auto Body Company, and Mary Menke, on behalf of themselves and all others similarly situated, by and through counsel, and for their First Amended Class Action Petition against Defendants Bridgeton Landfill, LLC, Republic Services, Inc., Allied Services, L.L.C., and Rock Road Industries, Inc, state and allege as follows:

1. Since World War II, big companies have made significant profits processing, handling, and storing radioactive materials in the St. Louis area. This activity began seven decades ago, when a government contractor began processing uranium ores in downtown St. Louis City. The hazardous, toxic, carcinogenic, radioactive wastes resulting from the processing of these ores are ounce for ounce some of the most dangerous materials on the planet. Despite knowing that that these materials were some of the most harmful substances on Earth, the Defendants accepted these wastes and used them for daily cover at their landfill. Despite knowing that these materials were radioactive, the Defendants allowed them to be released as building material to an unknown

number of people, which was subsequently incorporated into buildings and driveways in the St. Louis metropolitan area. Defendants treated these hazardous, toxic, carcinogenic, radioactive wastes with about the same level of care that a reasonable person might give to common household garbage, dumping it without authority from the State of Missouri and in violation of law, like everyday trash into the West Lake Landfill—a landfill which experts indicate is not even suitable for garbage, as it contains no liner.

2. Since then, that radioactive material, negligently dumped in an area surrounded by peaceful neighborhoods and playgrounds, has tormented the lives of everyday people—moms and dads who thought they were raising their kids in a clean home in a safe, quiet neighborhood; kids who want nothing more than to play in the backyard; and small business owners who had invested everything to build the American dream for their families. These everyday St. Louisans now find their lives disrupted, their homes contaminated, their businesses upended, and their properties devalued. They find their once-quaint neighborhoods filled with technicians testing and prodding their backyards and the dust of their vacuum cleaners to identify the quantity and the toxicity of the radioactive material Defendants have dumped into their lives.

3. Business owners spent substantial sums of money developing Earth City, which is now encompassed within impacted zone, and included in the scope of the class, as defined herein.

4. Tests conducted by representatives of the United States of America and others now confirm that the areas around the West Lake and Bridgeton Landfills (referred to herein as the “Landfill” which consists of several inactive landfills including West Lake and Bridgeton) are contaminated with the same radioactive wastes generated in the processing of uranium ores in the St. Louis area. The off-site radioactive waste found today in the real property, which contains

business and homes, surrounding the Landfill has the fingerprint (or profile) of the ore processed in St. Louis which generated the hazardous, toxic, carcinogenic, radioactive wastes that were dumped into and around the Landfill.

5. These radioactive wastes are known human carcinogens that can cause chronic damage to the skin, reproductive system, blood forming system, digestive system, central nervous system, and immune system in addition to numerous cancers. Illnesses such as cancers or birth defects may take a number of years after exposure to the radioactive material to appear.

6. Defendants have failed to take responsibility for their negligent behavior, failed to clean up the area, failed to move the residents and businesses out, and failed to make amends for the widespread damage they have caused. Instead, Defendants have hidden behind misstatements and omissions, misleading the public about the widespread contamination Defendants have caused and minimizing the immense risks to public health and safety that resulted from Defendants' actions.

7. It is time that Defendants finally be held accountable for their reckless and tortious conduct. This particular lawsuit seeks to correct the harm Defendants inflicted on just a few of the victims.

8. The Landfill is Superfund site, and the U.S. Environmental Protection Agency ("EPA") administrator, Scott Pruitt, has recently ordered at least a \$200 million plus cleanup that will take many years to complete. This cleanup will result in the uncovering and handling of radioactive wastes that will result in additional releases from the site. (This statement is provided for informational purposes only, as Plaintiffs are making no claims under the laws of the United States).

9. Plaintiff John C. Kitchin, Jr. owns property in Bridgeton, Missouri that Defendants contaminated. His property, including the land and building (hereinafter “North West Auto Body Property”), is contaminated with radioactive wastes from the Landfill, that are hazardous, toxic, carcinogenic.

10. Plaintiff North West Auto Body Company has lost significant business, revenue and customers as a result of the hazardous, toxic, carcinogenic, radioactive wastes from the Landfill, and will incur substantial additional costs in the future, including but not limited to future lost business and relocation costs.

11. Plaintiff Mary Menke owns and resides in property in Bridgeton, Missouri that Defendants contaminated. Her property, including the land and building (hereinafter “Menke Property”), is contaminated with radioactive wastes from the Landfill, that are hazardous, toxic, carcinogenic.

12. Plaintiffs, as well as all members of the proposed class, have sustained significant damages, as a result of Defendants’ conduct. Defendants should compensate Plaintiffs for their damages, and provide further relief as set forth below in this Petition.

JURISDICTION AND VENUE

13. This court has jurisdiction over the subject matter and the parties in this case because the causes of action stated in this Petition arose out of business activities conducted solely in Missouri, and out of torts committed solely in Missouri by resident and non-resident defendants.

14. Complete diversity does not exist in this matter as Defendant Rock Road Industries is a Missouri corporation and Plaintiffs are Missouri citizens.

15. Venue is proper in this court pursuant to Mo. Rev. Stat. §508.010, because Defendants' conduct giving rise to this action took place in St. Louis County, Missouri.

16. Plaintiffs do not allege any causes of actions arising under any laws of the United States.

17. Defendants Rock Road Industries and Bridgeton Landfill, LLC previously declared that the Price-Anderson Act does not apply to them because the West Lake Landfill is not a licensed nuclear facility: "Count One, arising under the Price-Anderson Act, is wholly inapplicable to Rock Road and Bridgeton Landfill, as the West Lake Landfill is not a nuclear facility subject to licensing by the nuclear Regulatory Commission."¹

18. Plaintiffs' claims do not fall within the scope of the Price-Anderson Act. The Landfill is not and has never been a licensed nuclear facility. The landfill has never received a license to possess, transport, or dispose of any radioactive wastes. Defendants have never entered into an indemnification agreement with the United States government under 42 U.S.C. § 2210 with respect to the complained activities.

19. Plaintiffs expressly contend that no occurrences that form the basis for this suit rise to the level of a nuclear incident. Plaintiffs' claims are freestanding state law claims concerning traditional state regulation and do not implicate the Price-Anderson Act and its textually manifest concerns related to liability limitation and indemnification. This principle was clearly enunciated by the Hon. Neil Gorsuch in the case of *Cook v. Rockwell Intern. Corp.*, 790 F.3d 1088 (10th. Cir. 2015) also known as the Rocky Flats litigation.

¹ Defendants Rock Road Industries and Bridgeton Landfill, LLC's Memorandum in Support of Motion to Dismiss (Doc 15), *Adams v. MI Holdings, Inc.* Case No. 4:12-cv-00641-JCH

20. At the time of the outrageous, reckless, negligent acts that form the basis for this lawsuit occurred, the Price-Anderson Act did not apply because the wastes at issue were not subject to said Act.

21. The Price-Anderson Act does not apply to the indisputably hazardous, toxic and carcinogenic wastes at issue in this First Amended Petition.

THE PARTIES

Plaintiffs

22. Plaintiff John C. Kitchin, Jr. is a Missouri citizen who owns real property located at 12990 St. Charles Rock Road, (“North West Auto Body Property”) including an automotive body shop owned and operated by Mr. Kitchin’s family, North West Auto Body Company. Plaintiff purchased the North West Auto Body Property in 1995. The property adjoins what is now the Landfill in Bridgeton, Missouri. Plaintiff John C. Kitchin, Jr. first learned that the North West Auto Body Property was contaminated with radioactive material in 2017.

23. Plaintiff Mary Menke is a Missouri citizen who owns real property located at 3388 Tortosa Dr. in Bridgeton, Missouri. Plaintiff Mary Menke first learned that her property was contaminated with radioactive material in 2018.

24. As a result of Defendants’ acts and omissions, Plaintiffs have sustained significant damages including damages to their property and the loss of use and enjoyment thereof.

Defendants

25. In this Petition, the defendants in this lawsuit are categorized into two groups, namely the owners and operators of the Landfill:

A. Landfill Owner Defendants

- i. Bridgeton Landfill, LLC, which owns the Bridgeton and West Lake Landfills; and
- ii. Rock Road Industries, Inc., which owned or owns the West Lake Landfill.

B. Landfill Operator Defendants

- i. Republic Services, Inc., which owns, oversees, and directs the environmental decisions and conduct of Bridgeton Landfill, LLC, Allied Services, L.L.C., and Rock Road Industries, Inc., and operates the Bridgeton and West Lake Landfills; and
- ii. Allied Services, L.L.C., which operates Bridgeton and West Lake Landfills.

26. Since at least November 2010, the Defendants have owned and/or operated the Bridgeton and West Lake Landfills.

27. Republic Services, Inc. (“Republic”) is a Delaware corporation with its principal place of business in the State of Arizona that carries on continuous and systematic business activities within the State of Missouri.

A. Republic describes itself as “the second largest provider of services in the domestic non-hazardous solid waste industry, as measured by revenue as well as a Fortune 500 company, publicly traded on the New York Stock Exchange (NYSE; RSF).”² Despite Republic’s record of violations and the widespread injuries resulting from Republic’s conduct, Republic promises the public that it lives by “high environmental and sustainability standards.”³ Republic has engaged in extensive

² <https://www.republicservices.com/about-us>

³ <http://www.republicservices.com/customer-support/facilities>

professional public relations efforts to downplay the significance of the problem, and their misleading statements can only be characterized as mere “puffery.”

- B. Republic’s presence in Missouri is immense, servicing more than 300 cities and towns throughout the state, including many in St. Louis County.⁴ Republic continuously and systematically avails itself of the protection of Missouri laws in St. Louis County courts, and regularly appears to defend itself in lawsuits tried here. Republic is responsible for promulgating and enforcing environmental and health and safety policies and procedures to its subsidiaries, which in this case they failed to adequately do.
- C. This lawsuit arises out of damages that resulted from Republic’s acts and omissions within the State of Missouri. Since 2008, Republic and its subsidiaries have maintained daily operational and managerial control over the management and environmental decisions of the Bridgeton and West Lake Landfills, decisions which gave rise to the violations of law and damage to property alleged in this Petition. Republic did so directly and through its subsidiaries Allied Services, LLC, Bridgeton Landfill LLC, and Rock Road Industries, Inc.

28. Allied Services, LLC (“Allied”), a Delaware limited liability company with its principal place of business in the state of Arizona, is a wholly-owned subsidiary of Republic Services, Inc., that continuously and systematically conducts business in the State of Missouri under its own name and under the fictitious name “Republic Services of Bridgeton.”

⁴ <https://www.republicservices.com/locations/missouri>

- A. Allied conducts daily operations of the Bridgeton Landfill and the West Lake Landfill.
 - B. Allied regularly and routinely avails itself of the protection of Missouri laws in St. Louis County courts, and regularly appears to defend itself in lawsuits tried here.
 - C. This lawsuit arises out of damages that resulted from Allied's acts and omissions within the State of Missouri. Since 2008, Allied has maintained daily operational and managerial control over the management and environmental decisions of the Bridgeton and West Lake Landfills, decisions which gave rise to the violations of law and damage to property alleged in this Petition.
 - D. Allied has also promulgated environmental and health and safety policies and procedures to its subsidiaries, which in this case they failed to adequately do.
29. Bridgeton Landfill, LLC formerly "Laidlaw Waste Systems" ("Landfill Owner"), is a Missouri limited liability company with its principle place of business in the State of Missouri. It continuously and systematically conducts business activities in the State of Missouri.
- A. Upon information and belief, Bridgeton Landfill, LLC owns the Bridgeton Landfill and the West Lake Landfill.
 - B. Bridgeton Landfill has continuously and systematically availed itself of the protection of Missouri laws in St. Louis County courts, and regularly appears to defend itself in lawsuits tried here.
 - C. This lawsuit arises out of damages that resulted from Bridgeton Landfill's acts and omissions within the State of Missouri. Specifically, since 2008, Bridgeton Landfill has owned, operated and maintained daily operational and managerial

control over the management and environmental decisions of the Bridgeton Landfill and the West Lake Landfill, which gave rise to the violations of law and damage to property alleged in this Petition.

30. Rock Road Industries, Inc. (“Rock Road”) is a Missouri corporation with its principal place of business in St. Louis, Missouri. Rock Road is a wholly-owned subsidiary of Republic Services, Inc. that continuously and systematically conducts business in the State of Missouri.

A. This lawsuit arises out of damages that resulted from Rock Road Industries, Inc.’s acts and omissions within the State of Missouri. Upon information and belief Rock Road Industries, Inc. owns the West Lake Landfill along with Bridgeton Landfill, LLC. Rock Road Industries has maintained daily operational and managerial control over the management and environmental decisions of the West Lake Landfill, decisions which gave rise to the violations of law and damage to property alleged in this Petition.

CLASS ACTION ALLEGATIONS

31. Plaintiffs file this class action petition pursuant to Missouri Supreme Court Rule 52.08 on behalf of all Missouri citizens who are owners of residential property and who are residents in the vicinity of the West Lake Landfill as detailed below.

32. Plaintiffs bring this action on behalf of themselves and the Class against Defendants to recover damages to their property and to obtain injunctive relief in the form of a total and complete cleanup of the contamination and to prevent and eliminate further contamination.

33. This action is maintainable as a class action and should be certified under Missouri

Supreme Court Rule 52.08.

34. The proposed class for property damage claims is defined as follows (“Property Damage Subclass”):

All Missouri citizens who currently own real property within the 11.0 square mile geographic region in the vicinity of the West Lake Landfill, as shown in the map in Figure 1 below, bounded by the Missouri River to the west and a line south of Rt. 370 to the north, with the eastern boundary following a southerly line across Old St. Charles Rd. before crossing the residential area lying to the south of the landfill.

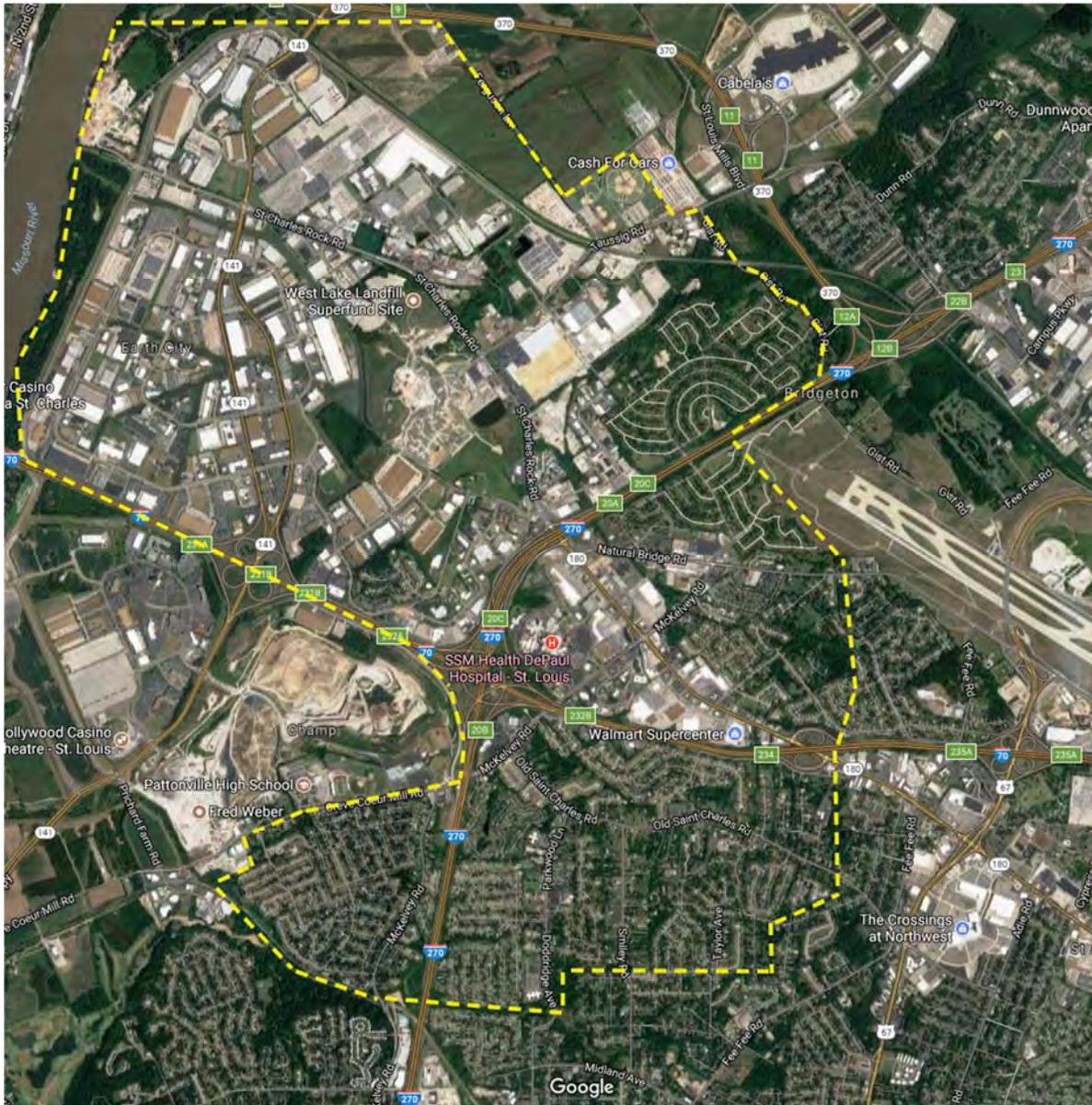


Figure 1. Class Area

“Own,” in the context of the class and subclass definitions, includes those who hold any fee simple estate or life estate.

35. The proposed class for medical monitoring is defined as follows (“Medical

Monitoring Subclass”):

All Missouri citizens who currently reside, or have resided since 1973, on a property within the 11.0 square mile geographic region in the vicinity of the West Lake Landfill, as shown in the map in Figure 1 above, bounded by the Missouri River to the west and a line south of Rt. 370 to the north, with the eastern boundary following a southerly line across Old St. Charles Rd. before crossing the residential area lying to the south of the landfill.

36. Excluded from the Property Damage Subclass and the Medical Monitoring Subclass (collectively, the “Class”) are Defendants and their officers, directors, and employees, as well as employees of any of Defendants’ subsidiaries, affiliates, successors, or assignees. Also excluded are the immediate family members of the above persons. Also excluded is any trial judge who may preside over this case. Also excluded from the class are persons who previously entered into valid and enforceable settlements of property damage claims related to the claims asserted herein with any of the Defendants.

37. The requirements for maintaining this action as a class action are satisfied, as set forth immediately below.

38. The proposed Classes are so numerous that the individual joinder of all absent class members is impracticable. While the exact number of absent Class Members is unknown to Plaintiffs currently, it is ascertainable by appropriate discovery and Plaintiffs, upon information and belief, allege that the proposed Class includes more than twenty-five members. The requirement of numerosity is therefore satisfied.

39. Common questions of law or fact exist as to all proposed Class Members and predominate over any questions which affect only individual members of the proposed Classes, and the answers to which will drive classwide resolution of Plaintiffs’ claims asserted herein.

These common questions of law or fact include:

- a. Whether Defendants engaged in the abnormally dangerous activity of storing radioactive waste;
- b. Whether Defendants unreasonably and unlawfully stored radioactive materials at the West Lake Landfill;
- c. Whether Defendants created and continue to create a high degree of risk of harm to Plaintiffs' and Class Members' property;
- d. Whether Defendants have intentionally, unreasonably, negligently, recklessly, willfully, wantonly and maliciously allowed the emission of radon gas and radioactive particles onto and around Plaintiffs' and Class Members' property;
- e. Whether Defendants' conduct or omissions affecting land surrounding the West Lake Landfill resulted in Plaintiffs' and Class Members' loss of use and enjoyment of their property;
- f. Whether the loss in property value suffered by Plaintiffs and Class is a result of Defendants' actions;
- g. Whether Plaintiffs and Class are entitled to damages; and
- h. Whether Defendants' conduct rises to the level of willfulness so as to justify punitive damages.

40. The claims of the Plaintiffs are typical of the claims of the Classes. Plaintiffs and all Class Members own or reside on land located near the location where Defendants recklessly dumped radioactive waste.

41. Plaintiffs will fairly and adequately represent the interests of the members of the

Class. Plaintiffs have no interest adverse to the interests of the members of the Class. Plaintiffs have retained competent attorneys who have experience in class action litigation.

42. Defendants have acted or refused to act on grounds that apply generally to the Class as discussed herein, such that final injunctive relief is appropriate for the Class as a whole.

43. Unless a class-wide injunction is issued, Defendants will continue to allow contamination of the properties of Plaintiffs and Class and will continue to violate Missouri law resulting in harm to thousands of Missouri citizens.

44. A class action is a superior method for the fair and efficient adjudication of this controversy. The adjudication of a separate action by individual members of the classes would create a risk of (a) inconsistent or varying adjudications with respect to individual members of the class; or (b) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests. Upon information and believe each of the Class Members suffered the same sort of damages and injuries as those suffered by the Plaintiffs, due to the contamination of their property by radioactive waste from the West Lake Landfill. In addition, this class action will allow for the resolution of identical claims in an efficient manner that avoids fragmented litigation in which inconsistent results could occur.

45. Questions of law or fact common to the members of the Classes predominate over any questions affecting only individual members. There is no special interest in the members of the classes individually controlling the prosecution of separate action. The expense and burden of individual litigation make it impossible for the Class Members individually to address the wrongs done to them.

46. There will be no difficulty in managing this lawsuit as a class action. Evidence relating to Defendants' alleged violations will be applicable to all members of the class; there are accepted means for notifying class members who have suffered injuries and damages described herein.

47. All of the class members are citizens of Missouri.

48. The principal injuries resulting from the conduct of the Defendants were incurred in Missouri.

49. No class action asserting similar factual allegations has been filed against any of the defendants in the preceding three years.

50. Rock Road Industries, Inc. and Bridgeton Landfill, LLC are Missouri citizens from whom significant relief is sought and whose conduct forms a significant basis of the below claims.

FACTS

Radioactive Wastes

51. Ounce for ounce, radioactive isotopes are the most toxic materials known to man.

52. Radiation is a type of energy transmitted over a distance. Some materials spontaneously emit radiation through a process known as radioactive decay. As these materials decay they release radiation energy and transform into other radioactive materials which will then also decay by releasing radiation energy and transforming into other materials.

53. Some radiation energies, including the radiation from the decay of radioactive materials used in nuclear and atomic processes, such as uranium, have the ability to penetrate other

material. When radiation energy interacts with other material, it causes a process called ionization⁵ which can damage chemical structures. When the “other material” that ionizing radiation passes through is human cells, it can cause damage within those cells resulting in mutation in genetic material which can lead to cancer and other harms.

54. People are exposed to radiation in two ways: external exposure from radioactive material in the environment and internal exposure by radioactive material that has entered the body. Radioactive material can be taken into the body by consuming foodstuffs and liquids with radioactivity in them, by inhaling radioactive gases or aerosol particles, or by absorption through wounds in the skin. The material taken in will internally expose the organs and tissues for as long as it remains inside the body.

55. One characteristic of the impact of exposure to ionizing radiation on the human body through both internal and external exposure is that even if the energy absorbed is low, the biological effects can still be gravely serious. The second characteristic is that there are latent biological effects of radiation.

56. The injuries resulting from exposure to ionizing radiation can also be separated into two categories: somatic injuries and genetic injuries. Somatic injuries are damages to the individual exposed. This can be damages to the skin, reproductive system, blood forming system,

⁵ Ionizing radiation is described as follows in the literature: “Ionizing Radiation is a form of radiation that includes alpha particles, beta particles, gamma rays, x-rays, neutrons, high-speed electrons, high-speed protons, and other particles capable of producing ions. Ionizing radiation has enough energy to cause changes in atoms through a process called ionization. Ionization can affect the atoms in living things and depending on the dose and exposure, can pose a serious health risk to humans. Ionizing radiation has sufficient energy to cause chemical changes in cells, causing damage to tissue and DNA in genes.” <https://www.epa.gov/radiation/radiation-health-effects>

digestive system, central nervous system, and immune system, as well as cancers. Illnesses such as cancers may take a number of years to appear.

57. Genetic injury is damage to the reproductive cells of the exposed individual in the form of mutation of their genetic cells. As a result, the probability of detrimental effects to the descendants of the exposed persons may greatly increase. These genetic mutations can be passed down to a person's offspring even generations later. These injuries include birth abnormalities and cancer.

58. One of the most dangerous aspects of radioactive materials is the length of time that radioactive isotopes will persist and accumulate in the environment. As detailed above, radioactive materials decay over time and each radioactive material gives off radiation energy as it decays and transforms into a different material. The rate at which a radioactive isotope decays is measured in half-life. The term "half-life" is defined as the time it takes for one-half of the atoms of a radioactive material to disintegrate. For example, after one half life, there will be one half of the original material, after two half-lives, there will be one fourth the original material, after three half-lives one eighth the original sample, and so forth.

59. Radium-226 has a half-life of 1,600 years. Radium-226 eventually decays to lead-210 and polonium-210. This means that as the radium-226 decays, it increases the lead-210 and polonium-210 at the Landfill and in the surrounding environment. Furthermore, half of the hazardous, carcinogenic radium-226 currently contaminating the West Lake Landfill will still remain as a grave problem even after 1,000 years from now if it is not physically removed. This is described in the scientific literature as follows:

Importantly, because the concentrations of short-lived radionuclides will progressively increase, the radioactivity at the site will likewise increase for the foreseeable future. For example, according to NRC, if the present day activity of ^{230}Th is estimated to be 100 times that of ^{226}Ra , then the alpha activity due to ^{226}Ra decay will increase fivefold over present levels in 100 years, nine-fold in 200 years, and 35-fold in 1000 years.⁶

60. According to the EPA's proposed corrective action plan of February 2, 2018, the risks related to radioactive materials at the Landfill will "increase in the future due to ingrowth of radium-226 from its parent thorium-230. These risks will increase according to the radioactive decay of thorium and will result in peak risks in approximately 9,000 years."

Radioactive Waste in the St. Louis Area

61. From 1942 to 1957, uranium ore was processed in downtown St. Louis City in association with the Manhattan Project.⁷ The Manhattan Project was the U.S. research project designed to develop the first nuclear weapons.

62. This downtown St. Louis facility was known as the St. Louis Downtown Site (the "SLDS") and was used to process uranium.

63. In the late 1940s, the Manhattan Project acquired a 21.7-acre tract of land near Lambert airport to store the hazardous, toxic, carcinogenic radioactive wastes from the uranium processing operations at the SLDS. The storage site near the airport is now referred to as the St. Louis Airport Site or SLAPS ("SLAPS").

⁶ Criss (2013) at 2-3 (citations omitted).

⁷ See n.10 (citing Alvarez (2013) and DeGarmo (2006)).

64. Radioactive wastes accumulated at SLAPS. These hazardous, toxic, carcinogenic, radioactive waste materials included pitchblende raffinate residues, radium-bearing residues, barium sulfate cake, Colorado raffinate residues, and were stored at SLAPS along with contaminated scrap. Some of these radioactive wastes were stored in bulk on the open ground in piles.

65. In the 1960's, some of the hazardous, toxic, carcinogenic radioactive wastes that had been stored at SLAPS were moved to a storage site on Latty Avenue in Hazelwood, Missouri (the "Latty Avenue Site") (part of this site later became the Hazelwood Interim Storage Site ("HISS")).

66. In or about 1973 the Defendants accepted over 46,000 tons of radioactive wastes combined with contaminated soil. Upon information and belief, despite knowing that the owner of these wastes was trying to dispose of dangerous radioactive materials for which the Landfill was not permitted to accept, the radioactive waste mixture was used by Defendants as daily cover for the Landfill. Defendants dumped the radioactive wastes into the Landfill and intentionally spread these wastes over a large area.

67. The scientific literature summarizes this dumping as follows:

In 1973, 8700 tons of radionuclide-bearing "leached barium sulfate" was allegedly dumped in an unlined Landfill in Bridgeton, MO that was not licensed to receive radwaste. This report finds that 1) the chemical and physical character of the radioactive materials has not been adequately characterized, and barium sulfate is probably not a major constituent; 2) the alpha and beta emissions of this material will increase 10x to 100x over present levels, reaching maximum activity in about 9000 years; 3) the Landfill has no protective barriers and a proximal subsurface fire; 4) the site has several hydrologic and geologic risk factors that magnify its unsatisfactory location in a populated area; 5) nuclear material has been in contact

with percolating waters and with a fluctuating water table; 6) groundwaters contaminated with radionuclides have migrated far from the original location of disposal; 7) background levels of radiation have been overstated, while other risks have been underestimated⁸

The Landfill

68. The West Lake Landfill is situated on about 200 acres at 13570 St. Charles Rock Road, in the City of Bridgeton. The Missouri River lies about one and one-half miles to the north and west of the Landfill. A shallow aquifer lies beneath the West Lake Landfill and surrounding neighborhoods.

69. Originally used for agriculture, the land became a limestone quarrying and crushing operation in 1939.

70. Beginning in the early 1950s, portions of the quarried areas and adjacent areas were used to dispose of municipal refuse, chemical wastes, industrial solid wastes, and construction/demolition debris.

71. The Landfill was never designed to be an adequate storage or disposal site for radioactive materials, nor was it ever licensed by the State of Missouri as such. Despite the Landfill not being properly designed to receive radioactive materials, the Defendants accepted hazardous, toxic, carcinogenic, radioactive wastes and spread them around the Landfill.

72. The inadequacies of the Landfill itself are described in the scientific literature as follows:

Although the West Lake Landfill contains significant amounts of long-lived radiotoxic wastes such as those contained in federally

⁸ Criss (2013) at 1.

licensed commercial radioactive waste Landfills, it meets virtually none of legal requirements governing shallow radioactive waste disposal to prevent off-site migration.⁹

73. The data collected on and around the Landfill documents radioactive contamination of soil, water, and air.

Onsite 226Ra concentrations in soils as high as 21,000 pCi/g were measured, compared to estimated background levels of 2 pCi/g. Elevated radium contents above the EPA's MCL of 5 pCi/l are also widespread in both the alluvial and bedrock aquifer within about 1500 feet of Areas 1 and Area 2. Airborne surveys established that external radiation levels exceeding 100µR/hr, while distal samples were <10 µR/hr. Levels recorded one meter above Area 2 were as high as 3-4 mR/hr, or as much as 400x higher than background. NRC reports that the subsequent addition of soil cover and construction debris to Areas 1 and 2 diminished these levels several fold.¹⁰

74. Other toxic and hazardous materials are expected to have been released via the air pathway, in addition to the radioactive materials. This phenomenon contributes to the damages complained of herein.

75. The Landfill stopped accepting waste on December 31, 2004 and is now used as a transfer station for municipal wastes.

76. The Landfill waste mass encompasses approximately 52 acres with approximately 240 feet below the ground's surface and a total waste thickness of 320 feet.

⁹ Kaltofen (2016) at 104.

¹⁰ Criss (2013) at 2 (citations omitted)

Radioactive Waste at the West Lake Landfill

77. Defendants caused or contributed to improper handling, storage, and disposal of an estimated 500,000 cubic yards of radioactive wastes in the Landfill. As a result, about 15 acres of the West Lake Landfill are filled with radioactive waste at depths up to 20 feet.

78. Upon information and belief, Defendants who operated the Landfill used the radioactive waste mixed with radioactive soil as daily cover in its Landfill operations thereby spreading the waste throughout the Landfill.

79. Defendants did not take necessary safety precautions when disposing of and handling the radioactive wastes and radioactive soil to prevent off-site contamination.

80. The staff of the Landfills were neither qualified, nor trained to handle or dispose of radioactive wastes in a safe manner.

81. The Landfill was not intended, nor designed to contain radioactive wastes. In reality, the Landfill is a chaotic pile of debris covered by unmanaged “natural vegetation, surrounded by a fence with radioactive [warning] signs.” Given the significant design and operational deficiencies, experts contend that the West Lake Landfill is even unsuitable for ordinary domestic waste.¹¹

The Fire

82. The Landfill has experienced problems with subsurface fires throughout its operational history. Despite having past experiences with subsurface fires, sufficient

¹¹ Criss (2013) at 4.

precautionary measures were not implemented to prevent future fires or to protect the radiologically contaminated areas from being affected.

83. Upon information and belief, Defendants discovered high temperatures in several monitoring wells. Upon information and belief, Defendants continued with aggressive gas extraction methods exacerbating the underground fire and enabling it to spread uncontrolled. Defendants finally reported to authorities that the Landfill was experiencing high temperatures on extraction wells evidencing a subsurface smoldering event.

84. Since then, the smoldering has intensified into a spreading subsurface fire evidenced by surface soil settlement, increased odors, elevated hydrogen levels, and high temperatures. High temperatures and smoke caused by the fire could mobilize radionuclides into the air and ultimately into soil, surface water, ground water.

85. Due to the fact that the radioactive material was used as daily cover around the landfill, it is more likely than not that some fire has already consumed radioactive material. However, if the subsurface fire reaches the radioactively impacted portions of the Landfill, the hot gases from the fire will likely cause fissures in the overburden material. These fissures may allow additional quantities of radioactive radon gas to escape the Landfill and become deposited as lead-210 onto properties in the class boundary as it decays.

86. A subsurface fire in the radioactively contaminated areas would be expected to create increased pressure conditions within the Landfill and force out entrained radioactive gases, including radon which is extremely toxic to breathe. A subsurface fire may be present in the radioactively contaminated areas for a long period of time before it is detected, because the only

apparent means to detect a subsurface smoldering event after closure is through annual visual inspections.

87. Another effect of a subsurface fire or smoldering event would be increased leachate production which has been observed in the Bridgeton Landfill from condensation of large amounts of steam.

88. The literature describes the risk of the West Lake underground fire as follows:

An underground fire is currently ongoing in the municipal Landfill (OU-2) that is immediately south of Area 1 of OU-1. Such fires can burn for years, creating high underground temperatures, and releasing carbon monoxide, dioxins, VOCs and other noxious chemicals, and particulates into air. Numerous people who reside near the Landfill complained about odor and health problems at the January 17, 2013 public meeting in Bridgeton. Risks for adjacent, radionuclide-bearing OU-1 include but are not restricted to the following 1) fire can spread from OU-2 into OU-1, particularly because demolition and construction Landfills are known to have much higher risk than municipal Landfills; 2) subterranean fires can result in Landfills collapse, landslides and slumping, endangering personnel and exposing dangerous materials to the surface; 3) Landfill fires have high explosion risk because of methane, gas cylinders, and drums; 4) high temperatures and smoke could mobilize radionuclides into surface water, ground water and air.¹²

89. There are at least two human exposure risk pathways that would exist from a subsurface smoldering event or subsurface fire reaching the radioactive materials. The first is the risk of people being subjected to increased air exposures to contaminants such as breathing in radon gas, radon-226. As airborne concentrations of radon gas increase, so would the risk to the neighboring population of breathing in radon gas and developing injuries such as lung cancers. Additionally, as radon gas decays it will become deposited onto people's property and in their

¹² Criss (2013) at 4-5 (citations omitted).

homes as radioactive lead-210 and polonium-210 which would subject people to increased risk of internal exposure to radioactive materials. The second pathway is increased leachate production that could further move contaminants and radioactive materials into the groundwater.

90. Despite these risks, the Defendants have allowed the subsurface fire to spread uncontrolled.

91. From the start of the subsurface smoldering event and throughout the subsequent fire, Plaintiffs have regularly encountered noxious, putrid, and offensive odors on his property coming from the Landfill, which diminishes quality of life and results in lost property value.

The Spread of Defendants' Radioactive Waste to Off-Site Businesses and Homes

92. As stated herein, Defendants have violated numerous standards for protection against radiation promulgated by the state of Missouri. Defendants' negligent handling, storage, and disposal of radioactive wastes and radioactive soil as daily cover caused dangerous contaminants to be deposited in several areas throughout the Landfill site and to be highly susceptible to off-site migration of radioactive materials including radon gas, radioactive particles, and radioactively-contaminated groundwater.

93. An example of water impacts of the Landfill will put this in perspective. Every day, the Landfill generates about 150,000 gallons of contaminated hazardous liquid waste. In a doomed attempt to capture that waste, the Landfill Defendants installed a leachate collection system. But the leachate collection system itself was inadequate and has resulted in spills, releases, and leaks that have contributed to the groundwater and surface water contamination in the area.

94. Radiological and organic contamination was also detected in trees adjacent to and off-site from the Landfill in the vicinity of the North West Auto Body Property. The presence of

radioactive contamination in the trees resulted from the uptake of off-site contamination from the Landfill.

95. Recent studies of the Landfill area document radioactive radon gas emissions from the Landfill are falling out and contaminating soil. Kaltofen reported the following:

Levels of ^{210}Pb in key samples were well above background activities, and were significantly out of secular equilibrium with other members of the uranium decay chain. This is strong evidence that the ^{210}Pb originated by decay of short-lived, fugitive radon gas that escaped the Landfill.¹³

96. Importantly, wherever lead-210 occurs, it will decay to polonium-210, creating an additional dose, as a matter of the laws of physics.

97. In addition, recent studies of surface water runoff from the Landfill, particularly after heavy rains, document radioactive contaminated surface water runoff to off-site properties.¹⁴

98. Critical to the legacy of radioactive particles contaminating the homes and communities surrounding the Landfill is that:

- A. The radioactive contamination has gone *off-site*, and
- B. The off-site radioactive contamination has the *fingerprint* (or profile) of the hazardous, toxic, carcinogenic radioactive wastes generated from the processing of uranium ore in downtown St. Louis which was subsequently stored at SLAPS and Latty Avenue before being disposed of in the Landfill.

¹³ Kaltofen (2016) at 110.

¹⁴ EPA Finds Radiation in West Lake Landfill Runoff, *CBS St. Louis*, May 26, 2016, <http://stlouis.cbslocal.com/2016/05/26/epa-finds-radiation-inwestlake-landfill-runoff>.

99. Defendants have a long and consistent history of consciously disregarding the regulations for the control of radiation in Missouri by:

- A. failing to make such surveys as are reasonably necessary to comply with the regulations;
- B. failing to post adequate warning signs as required by the regulations;
- C. failing to obtain a specific license for the handling of radioactive materials and wastes;
- D. failing to adequately monitor or control its offsite effluent by air and water;
- E. failing to provide dosimetry to workers and more than occasional visits by members of the general public to the site;
- F. failing to have an adequate or proper radiation protection program for its workers, despite knowledge of the significant potential for those workers to be exposed to material emitting gamma, beta, alpha radiation;
- G. allowing off-site migration of the radioactive materials, resulting in a release to an unrestricted area;
- H. allowing excessive radon emanation from the landfill;
- I. allowing unmonitored offsite migration of contaminated surface waters without a specific license,
- J. failing to maintain adequate waste exposure records and reports;
- K. failing retain and employ qualified radiation protection experts;
- L. failing to supply former workers with a summary of their radiation dose;

- M. failing to see that all work with radioactive materials is carried under conditions which will minimize the possibility of spread of radioactive materials;
 - N. failing to monitor the workplace and prevent worker or visitors' clothing from becoming contaminated with radioactive materials;
 - O. failing to require third parties who were disposing of radioactive material at the site to obtain a specific license;
 - P. allowing the disposal of radioactive waste materials by dumping or burial at a site not approved by the Department of Health;
 - Q. failing to have an accurate accounting for all radioactive materials at the site; and
 - R. failing to have records which show the amount of radioactive material received, transferred, decayed in storage, disposed of, and other information as may be necessary to account for the difference between the amount of radioactive material received or produced and the amount on hand.
100. Defendants essentially violated every Missouri regulation related to radiation exposure.
101. Due to risk of gamma radiation exposure, EPA has directed Republic to cover portions of the landfill with six inches of fill to protect workers and innocent members of the general public who will be exposed to gamma radiation if they are in that area. To date, this recommendation has not been implemented.
102. This zone of excessive gamma radiation was identified in 1978 during a surveillance flight by the NRC. Despite being informed of this zone of excessive gamma radiation, Defendants did nothing.

103. To this day, Defendants, despite orders from the EPA, continued to disregard the presence of radioactive materials at the landfill, including by failing to protect workers and visitors from radiation, including at the transfer station.

104. The only time Defendants takes any action to remediate or protect workers or the public from radioactive wastes is when ordered to do so by governmental body.

Concealment of Facts Related to Risk

105. Republic and other Defendants through their silence have reassured government officials, the public and Plaintiffs that the Landfill has not contaminated nearby properties. In particular, Republic and its representatives, as well as its professional public relations firm(s), have made misrepresentations that were meant to assure Plaintiffs that:

- A. Any suspicion of off-site contamination from the Landfill are merely rumors “being spread by alarmists.”¹⁵
- B. Its activities “should reassure the community that they are safe from and not being exposed to any risk from groundwater beneath West Lake Landfill.”¹⁶
- C. The Landfill’s neighbors, including the Plaintiffs “can rest assured that they are safe.”¹⁷

¹⁵ Jacob Barker, Radium above federal guidelines in groundwater near West Lake at 2, *St. Louis Today*, Dec. 17, 2014.

¹⁶ *Id.*

¹⁷ Jacob Barker, Frustration with EPA handling of West Lake growing at 5, *St. Louis Today*, Jan. 3, 2015.

D. The fire and Landfill are both at a “managed state.”¹⁸

E. The waste at the Landfill presents no danger to public health.¹⁹

Defendants’ Radioactive Particles Contaminated the Plaintiffs’ Property

106. The North West Auto Body Property and Menke Property (collectively, Plaintiffs’ Property) are contaminated by radioactive material.

107. Samples taken on and around Plaintiffs’ Property confirm an elevated presence of radioactive particles.

108. Plaintiffs’ Property neighbors the Landfill. This proximity puts the Plaintiffs’ Property in the direct path of radioactive air emissions, radioactive particles distributed by the wind blowing such contamination off the site in dirt and dust, radon gas, and frequent offensive odors; all of which emanate from the Landfill.

109. The Kaltofen (2016) published scientific paper identified “strong evidence of short lived fugitive radon gas that escaped from the landfill.”²⁰ These air emissions fall out to soil and dust as ²¹⁰Pb, a highly radioactive isotope.

110. It is also clear that radioactive material will be distributed from the Landfill “by surface water and winds.”²¹ The surface water runoff threat is heightened during periods of high rainfall and flooding, and has been documented.²²

¹⁸ *Frustration with EPA handling of West Lake growing*, Jacob Barker, St. Louis Today, January 3, 2015 at p. 5.

¹⁹ *Id.*

²⁰ Kaltofen (2016) at 111.

²¹ Kaltofen (2016) at 104.

²² EPA Finds Radiation in West Lake Landfill Runoff, *CBS St. Louis*, May 26, 2016, <http://stlouis.cbslocal.com/2016/05/26/epa-finds-radiation-inwestlake-landfill-runoff>.

111. Frequent offensive odors from the Landfill are experienced by Plaintiffs.

112. The radioactive wastes, which are hazardous, toxic, carcinogenic, that have polluted the Plaintiffs' Property and continue to threaten to further pollute Plaintiffs' Property match waste fingerprint (or profile) of the hazardous, toxic, carcinogenic radioactive wastes dumped in the Landfill.

113. This radioactive contamination on Plaintiffs' property migrated from the Landfill. The contamination was caused by the Defendants' improper handling, storage, and disposal of radioactive materials.

114. Radioactive contamination of Plaintiffs' Property and frequent offensive odors render Plaintiffs' Property unfit for normal use and enjoyment, and destroys its fair market value.

115. As a direct and proximate result of Defendants' conduct, Plaintiffs and the Class are currently being subjected to radioactive waste contamination and will suffer irreparable harm if an injunction is not granted requiring Defendants conduct a total and complete cleanup of the contamination and to prevent and eliminate further contamination.

COUNT I – TRESPASS

(brought individually and on behalf of the Property Damage Subclass)

116. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

117. Plaintiff John C. Kitchin, Jr. owns and controls the North West Auto Body Property located at 12990 St. Charles Rock Road, more particularly described above.

118. Plaintiff Mary Menke owns and controls the Menke Property located at 3388 Tortosa Drive, more particularly described above.

119. Defendants own and control property located at the Bridgeton and West Lake Landfills, which adjoins Plaintiffs' property.

120. Defendants store and/or transport radioactive materials and other toxic and hazardous wastes on their property.

121. Defendants have used these radioactive materials in a manner that is unreasonable, unlawful, malicious, and wanton, resulting in an invasion of Plaintiffs' property.

122. Defendants have caused these radioactive materials to migrate from Defendants' property and contaminate Plaintiffs' property.

123. Defendants willfully, wantonly, and maliciously caused the emission of radon gas, and radioactive particles onto and around Plaintiffs' property through their Landfill operations.

124. It was reasonably foreseeable that Defendants' actions would and will continue to contaminate Plaintiffs' property with radioactive particles and other hazardous wastes.

125. The migration of radon gas and radioactive particles from Defendants' property onto Plaintiffs' property has resulted and continues to result in direct physical interference with Plaintiffs' property. Such contamination is incompatible with the normal use and enjoyment of Plaintiffs' Property.

126. Plaintiffs did not give Defendants permission or consent to interfere with his property in this manner. Through Defendants' actions and inactions, they are illegally and improperly using Plaintiffs' property to store hazardous, toxic, carcinogenic, radioactive wastes.

127. The contamination of Plaintiffs' property with radon gas and radioactive particles, and other hazardous wastes, has resulted in significant damage to the property.

128. As a direct and proximate cause of this continuing and recurring physical interference, Plaintiffs have suffered and continue to suffer injury, including decreased property value.

**COUNT II – PERMANENT NUISANCE
(brought individually and on behalf of the Property Damage Subclass)**

129. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

130. Plaintiffs John C. Kitchin, Jr. owns and controls the North West Auto Body Property, more particularly described above.

131. Plaintiff Mary Menke owns and controls the Menke Property located at 3388 Tortosa Drive, more particularly described above.

132. Landfill Defendants own and control property located at the Bridgeton and West Lake Landfills, which adjoins Plaintiffs' property.

133. Defendants unreasonably and unlawfully stored and used radioactive materials at the Landfill, which adjoins Plaintiffs' property.

134. The Defendants caused and contributed to the radioactive contamination of Plaintiffs' property.

135. The Landfill and the radioactive waste that the Landfill contains are a permanent construction that is necessarily injurious to Plaintiffs as installed. It is not practical or possible to abate the presence of the Landfill or the radioactive waste stored there.

136. Operating an unlicensed radioactive hazardous waste dump in a populated area is a nuisance *per se*.

137. Defendants have intentionally, unreasonably, negligently, recklessly, willfully, wantonly and maliciously allowed the emission of radon gas and radioactive particles onto and around Plaintiffs' property, resulting in unreasonable interference with Plaintiffs' use and enjoyment of their property. Such contamination is incompatible with the normal use and enjoyment of the North West Auto Body Property.

138. Defendants' interference with Plaintiffs' use and enjoyment of the property is substantial.

139. Defendants have intentionally, unreasonably, negligently, recklessly, willfully, wantonly and maliciously allowed the emission of noxious, offensive odors and various hazardous substances into the surrounding air resulting in unreasonable interference with Plaintiffs' use and enjoyment of the property.

140. Defendants' continuous and unrelenting noxious odors invading Plaintiffs' property causes inconvenience to Plaintiffs and prevents them from using the property.

141. As a direct and proximate result of Defendants' interference with Plaintiffs' use and enjoyment of the property, Plaintiffs have suffered permanent injury, including decreased property value.

COUNT III – TEMPORARY NUISANCE
(brought individually and on behalf of the Property Damage Subclass)

142. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

143. Plaintiff John C. Kitchin, Jr. owns and controls the North West Auto Body Property, more particularly described above.

144. Plaintiff Mary Menke owns and controls the Menke Property located at 3388 Tortosa Drive, more particularly described above.

145. Defendants own and control property located at the Bridgeton and West Lake Landfills, which adjoins Plaintiffs' property.

146. Defendants unreasonably and unlawfully store and use radioactive materials at the Landfill, which adjoins Plaintiffs' property.

147. The Defendants caused and contributed to the radioactive contamination of Plaintiffs' property.

148. The Defendants intentionally, unreasonably, negligently, recklessly, willfully, wantonly and maliciously allow the emission of radon gas and radioactive particles onto and around Plaintiffs' property, resulting in unreasonable interference with Plaintiffs' use and enjoyment of their property. Such contamination is incompatible with the normal use and enjoyment of the North West Auto Body Property.

149. Defendants' interference with Plaintiffs' use and enjoyment of the property is substantial.

150. Defendants intentionally, unreasonably, negligently, recklessly, willfully, wantonly and maliciously allow the emission of noxious, offensive odors and various hazardous substances into the surrounding air resulting in unreasonable interference with Plaintiffs' use and enjoyment of their property.

151. Defendants' use of the Landfill causes frequent and unrelenting noxious odors to invade Plaintiffs' property and prevents Plaintiffs from using their property.

152. As a direct and proximate result of Defendants' interference with Plaintiffs' use and enjoyment of the property, Plaintiffs have suffered and continue to suffer injury, including decreased property value.

**COUNT IV – NEGLIGENCE
(brought individually and on behalf of the Class)**

153. Plaintiffs re-allege and incorporate by reference every allegation of this Complaint as if each were set forth fully herein.

154. Radioactive isotopes are known human carcinogens and are among the most toxic materials known to man. When property becomes contaminated with these wastes, the dangers can persist in the environment for thousands of years. Radioactive wastes should be handled, stored, and disposed of with the utmost safety in mind. Exposures to radioactive wastes should be as low as is reasonably achievable.

155. Knowing of the grave dangers posed by these wastes, the Defendants owed a duty of care to the Plaintiffs and the public to ensure the safe and legal handling, storage, and disposal of the radioactive wastes in order to prevent significant injury to property and persons.

156. Defendants were negligent in accepting hazardous, toxic, carcinogenic radioactive wastes at a landfill located in a residential area that was not capable of safely and properly disposing of radioactive materials. The Landfill was not properly licensed, nor configured, nor staffed to handle the disposal of radioactive wastes. Upon information and belief Defendants used the radioactive materials which were mixed with contaminated soil as daily cover.

157. The Defendants owed a duty to the Plaintiffs to operate the Landfill in a safe, legal, and reasonable manner so as not to contaminate and interfere with surrounding properties. The

Defendants owed a duty not to accept radioactive wastes for which they were not licensed or qualified to handle. After accepting radioactive wastes, the Defendants had a duty to safely handle, store and/or dispose of the radioactive wastes in order to prevent significant injury to property and persons.

158. Defendants were negligent in the construction, design, operating and maintenance of the Landfill.

159. Defendants negligently accepted hazardous, toxic, carcinogenic radioactive wastes when the Landfill was not designed, nor staffed to handle the disposal of radioactive wastes. The negligent design and maintenance of the Landfill by Defendants failed to prevent the release of radon gas and radioactive particles and hazardous and toxic wastes onto surrounding properties in excess of guidelines.

160. Upon information and belief, Defendants' negligent training of personnel handling radioactive, toxic, and hazardous materials on site was a direct and proximate cause of damage to Plaintiffs' property.

161. Defendants' negligent use of radioactive wastes mixed with radioactive soil as daily cover spread contamination into a broader area and prevented Defendants and regulators from knowing the location of these dangerous wastes. The negligent use of radioactive materials as daily cover in an unlined Landfill resulted in contamination of the groundwater underlying the Landfill and surrounding properties.

162. Defendants were negligent in failing to prevent the subsurface fire. Defendants should have implemented adequate practices with respect to gas extraction to avoid subsurface fires after they initially dealt with problems with smoldering events and increased subsurface

temperatures in the 1990's. The subsurface fire along with the resulting noxious odors and increased risk of significant radon gas emissions are a direct and proximate result of the Defendants' negligence in the operation of the Landfill. Such contamination is incompatible with the normal use and enjoyment of the Plaintiffs' Property.

163. Defendants' negligence throughout the history of the mishandling and improper dumping of radioactive wastes in the Landfill has resulted in repeated releases of radon gas and radioactive particles and other hazardous materials as well as offensive odors onto Plaintiffs' property, in disregard of applicable regulations and property rights.

164. Defendants' negligence has damaged Plaintiffs' property by contaminating it with radioactive particles, toxic and other hazardous substances and noxious odors. Defendant's negligence diminished Plaintiffs' property value.

165. The injuries sustained by Plaintiffs are of the kind that do not occur without negligence.

166. Plaintiffs' injuries were the result of wastes generated, disposed of, and controlled by Defendants.

167. Plaintiffs did not consent to the injuries, nor did they contribute to the injuries in any way.

**COUNT V – NEGLIGENCE PER SE
(brought individually and on behalf of the Class)**

168. Plaintiffs re-allege and incorporate by reference every allegation of this Complaint as if each were set forth fully herein.

169. Defendants violated Missouri regulations for Protection against Ionizing Radiation, 19 C.S.R. 20-10.070, 20-10.090, Missouri Solid Waste Management Law and Regulations, 10 C.S.R. 80-2.020(1)(F), 80-3.010(3)(A)(2), 80-3.010(3)(B)(1), 80-3.010(8)(A), 80-3.010(9)(C)(2), 80-3.010(13)(C), 80-3.010(14)(C), 80-3.010(19)(A), 10 CSR 80-3.010(19)(C)(7); Mo. Rev. Stat. §§ 260.210.1(4), 260.380(1); Missouri Clean Water Act, Mo. Rev. State. § 644.051.1, and Missouri Air Conservation regulations, 10 C.S.R. 10-6.165, all of which require the safe storage and disposal of radioactive material so as to protect the health and safety of the public.

170. Plaintiffs are members of the class of persons that the Missouri regulations for Protection against Ionizing Radiation, Missouri Solid Waste Management Law and Regulations, and Missouri Air Conservation regulations were intended to protect

171. The contamination of Plaintiffs' land is the kind of injury that the Missouri regulations for Protection against Ionizing Radiation, Missouri Solid Waste Management Law and Regulations, Missouri Hazardous Waste Management Law, and Missouri Air Conservation regulations were designed to prevent.

172. Defendants' violations of Missouri regulations for Protection against Ionizing Radiation, Missouri Solid Waste Management Law and Regulations, and Missouri Air Conservation regulations were the proximate cause of Plaintiffs' injuries.

173. Defendants' negligence throughout the history of the mishandling and improper dumping hazardous, toxic, carcinogenic, radioactive wastes in the Landfill area has resulted in repeated releases of radon gas and radioactive particles and other hazardous materials as well as

offensive odors onto Plaintiffs' property in violation of applicable regulations and disregard for property rights.

174. Defendants' negligence has damaged Plaintiffs' property by contaminating it with radioactive particles, toxic and other hazardous substances and noxious odors. Defendant's negligence diminished Plaintiffs' property value.

175. Plaintiffs did not consent to the injuries, nor did they contribute to the injuries in any way.

**COUNT VI – STRICT LIABILITY/ABSOLUTE LIABILITY
(brought individually and on behalf of the Class)**

176. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

177. Defendants engaged in the abnormally dangerous activity of handling, storing, and/or disposing of radioactive waste.

178. By handling, storing, and/or disposing of radioactive waste, Defendants have created and continue to create a high degree of risk of harm to Plaintiffs' property.

179. Defendants have intentionally failed to eliminate the risk of harm caused by their handling, storing, and/or disposing of radioactive waste.

180. As a direct result of Defendants' abnormally dangerous activities, Plaintiffs' property was contaminated with radioactive materials and they suffered and continue to suffer injury, including diminished property value. Such contamination is incompatible with the normal use and enjoyment of Plaintiffs' Property.

181. Plaintiffs' injuries are of the kinds that result from the dangerous nature of handling, storing, and/or disposing of radioactive waste.

182. The injuries that Defendants' handling, storing, and/or disposing of radioactive waste have caused Plaintiffs to suffer, drastically outweigh the value of the Landfill.

183. Accordingly, Defendants are jointly and severally liable for any and all damages Plaintiffs have sustained as a result of their strict liability for handling, storing and/or disposing of radioactive materials, including, without limitation, any incidental or consequential damages.

**COUNT VII – INJUNCTIVE RELIEF
(brought individually and on behalf of the Class)**

184. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

185. Defendants have tortiously contaminated Plaintiffs' property with hazardous, toxic, carcinogenic, radioactive wastes.

186. The Defendants' tortious acts threaten the safety and normal use and enjoyment of the Plaintiffs' property.

187. The radioactive contamination of Plaintiffs' property has caused a significant increased risk to Plaintiffs, and therefore Plaintiffs are in need of a thorough scientific evaluation of the radioactive contaminant levels throughout the Property.

188. The need for such an evaluation is a direct consequence of the Defendants' tortious conduct, and does not arise from the innocent conduct of the homeowners.

189. Therefore, Plaintiffs seek injunctive and equitable relief to require the Defendants to conduct the necessary scientific evaluation their property, consistent with contemporary

scientific principles. Plaintiffs seek injunctive and equitable relief to require the Defendants to respond to the consequences of this tortious contamination by providing the necessary medical monitoring in the form of environmental testing, clean-up, and medical tests as indicated by the results of the scientific evaluation.

190. Plaintiffs seek this injunctive and equitable relief either in the form of an injunction requiring the Defendants to conduct the necessary monitoring themselves, or in the form of a court-ordered and court-supervised fund (with a court-appointed trustee if the court deems that appropriate) to provide for the necessary monitoring.

191. Such injunctive and equitable relief will decrease the radioactive contamination risks of Plaintiffs' Property, decrease the interference with the use and enjoyment of said property, and further mitigate Plaintiffs' damages.

**COUNT VIII – CIVIL CONSPIRACY
(brought individually and on behalf of the Class)**

192. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

193. Defendants wrongfully and fraudulently agreed and conspired together to injure Plaintiffs and members of the Class, by wrongfully releasing radioactive wastes, as more fully alleged herein.

194. Defendants wrongfully and fraudulently agreed and conspired together to take the actions alleged herein giving rise to causes of action for nuisance, trespass, negligence, negligence per se, strict/absolute liability, injunctive relief, and punitive damages as alleged herein.

195. As result of the conspiracy of the Defendants, Plaintiffs and members of the Class have suffered damages, as more fully alleged herein.

**COUNT IX – PUNITIVE DAMAGES
(brought individually and on behalf of the Class)**

196. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

197. Defendants committed one or more of the willful, wanton, malicious, reckless, and outrageous acts more fully set forth above which individually or cumulatively justify the award of punitive damages in this matter.

198. Defendants knew or had information from which, in the exercise of ordinary care, should have known that such conduct, as detailed above, created a high degree of probability of injury to Plaintiffs and others similarly situated.

199. The willful, wanton, malicious, reckless, and outrageous acts of Defendants, as detailed above, evidence Defendants' complete indifference to and/or conscious disregard for the safety of Plaintiffs, and others similarly situated.

PRAYER FOR RELIEF

WHEREFORE, as to each Count, and all Counts, Plaintiffs pray for judgment in favor of Plaintiffs and Class and against Defendants Bridgeton Landfill, LLC, Republic Services, Inc., Allied Services, L.L.C., and Rock Road Industries, Inc., as well as awarding the following to Plaintiffs and against Defendants:

- a. an award of actual, general, special, incidental, statutory, compensatory and consequential damages in an amount to be proven at trial, including compensatory

damages for the loss and use of enjoyment of Plaintiffs' property; annoyance and discomfort; damage to Plaintiffs' personal property; the diminution in the market value of Plaintiffs' property; as well as the costs and expenses incurred as a result of Plaintiffs' exposure to radioactive emissions, including costs of remediation and relocation;

- b. an award of double damages for malicious trespass as provided for under Mo. Rev. Stat. § 537.330;
- c. an award of punitive and exemplary damages as fair and reasonable in an amount sufficient to punish Defendants and to deter similar conduct in the future;
- d. costs and attorney fees;
- e. interest on the above amounts as allowed by law, including but not limited to pre- and post-judgement interest;
- f. for appropriate injunctive and equitable relief, permitted by law or equity including a preliminary and/or permanent injunction enjoining Defendants from continuing the unlawful conduct as set forth herein and directing Defendants to identify, with Court supervision, members of the Class in order to compensate them and to clean up all contamination, and including medical monitoring; and
- g. for any further relief this Court deems just and proper.

LEAVE GRANTED:

Maura B McShane

Judge

Division 2

April 10, 2018

Respectfully submitted,

KEANE LAW LLC

/s/ Ryan A. Keane

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Attorneys for Plaintiffs and proposed Class

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 2, 2018, a true and accurate copy of the foregoing was served by filing it in the court's electronic filing system, which will provide electronic notice to all parties and attorneys of record.

/s/ Ryan A. Keane

**TWENTY-FIRST JUDICIAL CIRCUIT OF THE STATE OF MISSOURI
ST. LOUIS COUNTY**

**JOHN C. KITCHIN, JR., NORTH)
WEST AUTO BODY COMPANY, and)
MARY MENKE, on behalf of themselves and)
all others similarly situated,)**

Plaintiffs,

vs.

**BRIDGETON LANDFILL, LLC,)
REPUBLIC SERVICES, INC.,)
ALLIED SERVICES, LLC, and)
ROCK ROAD INDUSTRIES, INC.,)**

Defendants.

Cause No. 18SL-CC00613

Division No. 2

ORDER

Before the Court is the Motion for *Pro Hac Vice* Admission of Catherine Hilton filed on behalf of Plaintiffs John C. Kitchin, Jr., North West Auto Body Company, and Mary Menke, on behalf of themselves and all others similarly situated. Having considered the motion, the Court is of the opinion that the motion should be **GRANTED**. It is therefore **ORDERED** that Catherine Hilton is admitted *pro hac vice* in the above-styled matter.

Signed the _____ day of _____, 2018.

SO ORDERED:

Maura B McShane

Judge

Division 2

April 12, 2018

**TWENTY-FIRST JUDICIAL CIRCUIT OF THE STATE OF MISSOURI
ST. LOUIS COUNTY**

**JOHN C. KITCHIN, JR., NORTH)
WEST AUTO BODY COMPANY, and)
MARY MENKE, on behalf of themselves and)
all others similarly situated,)**

Plaintiffs,

vs.

**BRIDGETON LANDFILL, LLC,)
REPUBLIC SERVICES, INC.,)
ALLIED SERVICES, LLC, and)
ROCK ROAD INDUSTRIES, INC.,)**

Defendants.

Cause No. 18SL-CC00613

Division No. 2

ORDER

Before the Court is the Motion for *Pro Hac Vice* Admission of Ron Austin filed on behalf of Plaintiffs John C. Kitchin, Jr., North West Auto Body Company, and Mary Menke, on behalf of themselves and all others similarly situated. Having considered the motion, the Court is of the opinion that the motion should be **GRANTED**. It is therefore **ORDERED** that Ron Austin is admitted *pro hac vice* in the above-styled matter.

Signed the _____ day of _____, 2018.

SO ORDERED:

Maura B McShane

Judge

Division 2

April 12, 2018

EXHIBIT 2

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

JOHN C. KITCHIN, JR. and)
NORTH WEST AUTO BODY COMPANY,)
on behalf of themselves and all others)
similarly situated,)

Plaintiffs,)

Case No. _____

vs.)

BRIDGETON LANDFILL, LLC; et al.,)

Defendants.)

NOTICE OF CONSENT TO REMOVAL

Pursuant to 28 U.S.C. § 1446(b)(2), Defendant Republic Services, Inc. gives its consent to the removal of the above-styled action filed by Bridgeton Landfill, LLC.

Dated: April 27, 2018

LATHROP GAGE LLP

By: /s/ William G. Beck

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ATTORNEYS FOR DEFENDANTS

EXHIBIT 3

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

JOHN C. KITCHIN, JR. and)
NORTH WEST AUTO BODY COMPANY,)
on behalf of themselves and all others)
similarly situated,)

Plaintiffs,)

Case No. _____

vs.)

BRIDGETON LANDFILL, LLC; et al.,)

Defendants.)

NOTICE OF CONSENT TO REMOVAL

Pursuant to 28 U.S.C. § 1446(b)(2), Defendant Allied Services, LLC gives its consent to the removal of the above-styled action filed by Bridgeton Landfill, LLC.

Dated: April 27, 2018

LATHROP GAGE LLP

By: /s/ William G. Beck

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ATTORNEYS FOR DEFENDANTS

EXHIBIT 4

KEANE LAW PRESS CONFERENCE

FEBRUARY 21, 2018

Transcript of video recorded on
February 21, 2018 and transcribed on
February 26, 2018.

TRANSCRIBED BY:

MICHELLE M. YOHLER, CSR, RMR, CRR

Illinois CSR No. 84-4531.

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this is happening. And I want more attention on this, and I want this to be fixed now.

That's why we're bringing these cases.

Our cases are not just about getting compensation, which many people think that that's the purpose of a class action. No, we have -- our class action is two-fold. And perhaps the most important thing that we are trying to strive to do is get injunctive relief. We are going to ask the courts to enter an injunction forcing these defendants to fix this mistake.

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But I think, you know, one of the major goals in this case is to get the defendants, not only to compensate these people, but to clean up this mess and stop it from getting worse.

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So our class action is not only seeking financial compensation for these homeowners who have their homes values diminished, but also to have them -- the defendants clean up this property.

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To clean up the landfill, to get rid of this radioactive waste, to do a full and extensive remediation, not 70 percent or part of the way as the EPA may be proposing but now, clean it up now and clean it up thoroughly because this is a disaster. And to make sure this fire does not reach this radioactive waste.

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I'm telling you, there's not enough attention on this. It's a scary, scary proposition, and it needs to be addressed. And

1 it just -- there's been too much inaction.

2 And so, you know, I'm proud to get
3 involved in this to try to do my best as an
4 attorney to bring attention to this and to use
5 the legal system to try to bring about a remedy.

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7 I, MICHELLE M. YOHLER, CSR, RMR, CRR,

8 a certified shorthand reporter, within and for

9 the County of Cook, State of Illinois, do hereby

10 certify that I transcribed the videotape and

11 that the foregoing is a true and accurate

12 transcript of the videotape to the best of my

13 ability.

14 I do hereunto set my hand and affix

15 my seal of office at Chicago, Illinois, this

16 26th day of February, 2018.

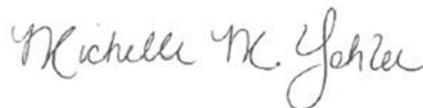
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23 Michelle M. Yohler, CSR, RMR, CRR

24 Certified Shorthand Reporter

25 CSR No.: 84-4531

EXHIBIT 5

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MICHAEL DAILEY and ROBBIN DAILEY,

Plaintiffs,

v.

BRIDGETON LANDFILL, LLC, REPUBLIC
SERVICES, INC., ALLIED SERVICES, LLC,
ROCK ROAD INDUSTRIES, INC., MI
HOLDINGS, INC., MALLINCKRODT, INC.,
COTTER CORPORATION,
COMMONWEALTH EDISON COMPANY, and
EXELON CORPORATION,

Defendants.

Case No. 4:17-cv-00024

**DECLARATION OF STEPHANIE R.
FEINGOLD, ESQ. IN OPPOSITION
TO PLAINTIFFS' MOTION TO
REMAND TO STATE COURT**

Stephanie R. Feingold, of full age, hereby declares as follow:

1. I am a partner with the law firm of Morgan, Lewis & Bockius LLP, attorneys for Defendant Cotter Corporation (N.S.L.) ("Cotter") (improperly named as Cotter Corporation), and have been admitted *pro hac vice* to represent Cotter in connection with this matter. As counsel for Cotter, I am fully familiar with the facts set forth herein and make this Declaration based on personal knowledge.

2. Attached hereto as Exhibit A is a true and correct copy of Source Material License No. SMA-862, issued by the Atomic Energy Commission on February 14, 1966, to Continental Mining & Milling Company.

3. Attached hereto as Exhibit B is a true and correct copy of Source Material License No. SMB-654, issued by the Atomic Energy Commission on December 31, 1963, to Contemporary Metals Corporation.

4. Attached hereto as Exhibit C is a true and correct copy of Source Material License No. SMC-907, issued by the Atomic Energy Commission on December 29, 1966, to Commercial Discount Corporation.

5. Continental Mining & Milling Co., Contemporary Metals Corporation, and Commercial Discount Corporation were prior licensees of the radioactive materials stored at St. Louis Airport Site and the Latty Avenue Site, for which Cotter was granted a source material license in 1969. Attached hereto as Exhibit D is a true and correct copy of Source Material License No. SUB-1022, issued by the Atomic Energy Commission on December 30, 1969, to Cotter.

6. Cotter's source material license remained in effect until the Atomic Energy Commission terminated it on November 13, 1974. Attached hereto as Exhibit E is a true and correct copy of the November 13, 1974 letter from the Atomic Energy Commission informing Cotter of the termination of Source Material License No. SUB-1022.

7. Attached hereto as Exhibit F is a true and correct copy of the March 21, 2014 Letter from the EPA Regional Administrator Karl Brooks to Missouri Attorney General Chris Koster.

8. Attached hereto as Exhibit G is a true and correct copy of the November 17, 2016 letter from EPA General Counsel Alyse Stoy to Plaintiffs' attorneys Richard S. Lewis and Daniel T. DeFeo.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: February 27, 2017


Stephanie R. Feingold

EXHIBIT A

EE14984

CCN _____

TECHNICAL SERVICES DIVISION (TSD) BACKFIT
 (Documents dated prior to 1 November 1988)

TSD COMM TYPE 21GX

FUSRAP COMMUNICATIONS DISTRIBUTION
 DOE/ORO TECHNICAL SERVICES DIVISION (CE-53)
 BECHTEL NATIONAL, INC. — JOB 14501

COMM REF _____
 ADMIN RCD _____

SUBJECT SOURCE MATL LICENSE FOR SLAPS

FROM HARMON TO RORAK COMM DATE 02/14/66

ADDR CODE 1 CLOSING CCN _____ WBS 153
NUMBER BY

SUBJECT CODE 2540 DOE FILE NO. _____

AFFECTED DOCUMENT _____

RESPONSE TRACKING INFORMATION			
PRIMARY:			
OWED TO: _____	OWED BY: _____ (ORG) _____		
(ORG) _____ TARGET DATE <u>1/1</u>	CLOSING CCN _____	COMPL DATE <u>1/1</u>	CLOSING REF _____
SECONDARY:			
OWED TO: _____	OWED BY: _____ (ORG) _____		
(ORG) _____ TARGET DATE <u>1/1</u>	CLOSING CCN _____	COMPL DATE <u>1/1</u>	CLOSING REF _____

COMMENTS _____

PLEASE RETURN TO PDCC FOR CORRECTIONS

File EE 113984
application review

FEB 14 1966

KEL:KEL
40-6811

Continental Mining & Milling Co.
203 South LaSalle Street
Chicago, Illinois 60604

Attention: Mr. Clemons M. Roark
Vice President

Gentlemen:

Enclosed is Source Material License No. SMA-862.

Since you indicate in your letter dated February 8, 1966, that the application contained therein supercedes the previous application of your subsidiary company, Contemporary Metals Corporation, Source Material License No. S4B-654 issued to Contemporary Metals Corporation as renewed December 31, 1964, is hereby terminated and a new license No. SMA-862 is issued in the name of Continental Mining & Milling Co.

Please note that this new license authorizes only removal of stock-pile residues from 50 Brown Road, Robertson, Missouri, and storage at your facilities at 9200 Latty Avenue, Hazelwood, Missouri.

The remainder of your application dealing with the processing of residues is under review. We will communicate with you later regarding this phase of your application.

Very truly yours,

DISTRIBUTION:

- Document En. w/encl.
- State Health (Lic. only)
- Suppl.
- Compliance, Reg. III, w/encl.
- N. Doulos, D.H., w/encl.
- OV Br. Reading File w/encl.
- Div. Reading File w/o encl.

Don F. Harmon
Source & Special Nuclear Materials Branch
Division of Materials Licensing

[Enclosure: 1 80
SMA-862

RECEIVED

cc: D L. Oakley 2-19-66

Encl. 4

John

Form AEC-410
(1-61)UNITED STATES
ATOMIC ENERGY COMMISSION

E 14984

SOURCE MATERIAL LICENSE

Pursuant to the Atomic Energy Act of 1954, and Title 10, Code of Federal Regulations, Chapter 1, Part 40, "Licensing of Source Material," and in reliance on statements and representations heretofore made by the licensee, a license is hereby issued authorizing the licensee to receive, possess and import the source material designated below; to use such material for the purpose(s) and at the place(s) designated below; and to deliver or transfer such material to persons authorized to receive it in accordance with the regulations in said Part. This license shall be deemed to contain the conditions specified in Section 183 of the Atomic Energy Act of 1954 and is subject to all applicable rules, regulations, and orders of the Atomic Energy Commission, now or hereafter in effect, including Title 10, Code of Federal Regulations, Chapter 1, Part 20, "Standards for Protection Against Radiation," and to any conditions specified below.

Licensee		3. License No. SMA-862
1. Name	Continental Mining & Milling Co.	4. Expiration Date February 28, 1969
2. Address	208 South LaSalle Street Chicago, Illinois 60604	5. Docket No. 40-6811
6. Source Material Uranium and thorium.	7. Maximum quantity of source material which licensee may possess at any one time under this license 125,000 tons of residues presently stockpiled at 50 Brown Road, Robertson, Missouri	

CONDITIONS

8. Authorized use (Unless otherwise specified, the authorized place of use is the licensee's address stated in Item 2 above.)
Removal of stockpile residues from 50 Brown Road, Robertson, Missouri, and storage only at the licensee's facilities located at 9200 Latty Avenue, Hazelwood, Missouri, in accordance with the procedures described in the licensee's application dated February 4, 1966, and supplements dated February 7 and February 8, 1966.
9. Transfer of source material to the licensee's Hazelwood, Missouri, site is not authorized until fencing and lock gates have been installed in accordance with the licensee's submittal dated February 8, 1966.

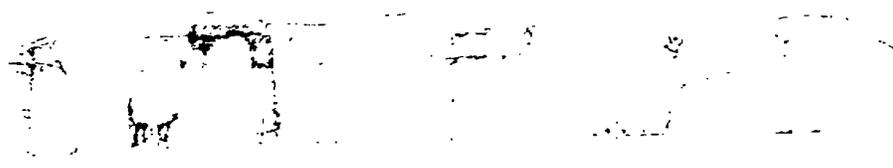
For the U. S. ATOMIC ENERGY COMMISSION

Date of issuance FEB 14 1966

U. S. GOVERNMENT PRINTING OFFICE: 1962 O-532381 Don F. Harmon
Division of Materials Licensing

COPY

EXHIBIT B



DLP:PLL
40-5011

DEC 3 1963

Mr. Clemens M. Roark
Suite 201, 500 Plumas
Reno, Nevada

Dear Mr. Roark:

Enclosed is Source Material License No. SME-654, as re-
newed. Please note that all conditions of this license
remain the same.

In our letter dated November 9, 1962, we requested two
additional copies of your letter dated August 28, 1962,
and two copies of the revised blue print entitled "Sche-
matic Plan for Contemporary Metals Corporation Residue
Accessing Plant," transmitted with this information and
will need it in order to complete our records.

Very truly yours,

Donald A. Mussbauer, Chief
Source and Special Nuclear Materials
Branch
Division of Licensing and Regulation

Enclosure:
SME-654, as ren.

DISTRIBUTION:

Formal
Doc. No.
Br. 7 Div. of State
Licenses (Lic. only)

OFFICE	LR	Law	Dev	Doc	Reg	3
SURNAME	Roark	Roark	Roark	Roark	Roark	Roark
DATE	12/31/63	12/31/63	12/31/63	12/31/63	12/31/63	12/31/63

U. S. GOVERNMENT PRINTING OFFICE
AEC-318 (Rev. 9-53)

E/H

Form AEC-410
(1-61)UNITED STATES
ATOMIC ENERGY COMMISSIONCOPY
SOURCE MATERIAL LICENSE

Pursuant to the Atomic Energy Act of 1954, and Title 10, Code of Federal Regulations, Chapter 1, Part 40, "Licensing of Source Material," and in reliance on statements and representations heretofore made by the licensee, a license is hereby issued authorizing the licensee to receive, possess and import the source material designated below; to use such material for the purpose(s) and at the place(s) designated below; and to deliver or transfer such material to persons authorized to receive it in accordance with the regulations in said Part. This license shall be deemed to contain the conditions specified in Section 183 of the Atomic Energy Act of 1954 and is subject to all applicable rules, regulations, and orders of the Atomic Energy Commission, now or hereafter in effect, including Title 10, Code of Federal Regulations, Chapter 1, Part 20, "Standards for Protection Against Radiation," and to any conditions specified below.

Licensee		3. License No. SM3- 654, as renewed
1. Name	Contemporary Metals Corporation	4. Expiration Date January 1, 1965
2. Address	1039 South San Gabriel Boulevard San Gabriel, California	5. Docket No. 40-6811
6. Source Material Uranium and thorium.	7. Maximum quantity of source material which licensee may possess at any one time under this license 125,000 tons of residues presently stockpiled at Brown Road, Robertson, Missouri.	

CONDITIONS

8. Authorized use (Unless otherwise specified, the authorized place of use is the licensee's address stated in Item 2 above.)
For use in accordance with the procedures described in the licensee's application dated May 17, 1962, and supplements dated May 28, July 19 & 20, August 28 & 31, 1962; and December 9, 1963.
9. Authorized places of use: Residue stockpile at Brown Road, Robertson, Missouri, and the licensee's processing facility at 7210 Polson Lane, Hazelwood, Missouri.
10. Process operations shall begin only at such time as the licensee has completed the installation of all equipment and facilities as described in the application and supplements thereto. However, removal and preparator operations at the residue stockpile site may begin at such time as the equipment and facilities described in the application and supplements thereto for this operation have been completed.

FORM AEC-401/410A

U. S. ATOMIC ENERGY COMMISSION

Page 2 of 2 Pages

SOURCE
MATERIAL LICENSE
Supplementary Sheet

License Number SWB-654

- 11. Mr. Alan P. Denning shall serve as the Director of the radiological safety program described in the application and supplements thereto specified in Item 8 of this license.
- 12. The St. Louis Testing Laboratory shall perform the quality control services as described in the application and supplements thereto specified in Item 8 of this license.
- 13. The licensee shall submit after the first three (3) months of operations, a report containing the results of the required radiological surveys.
- 14. The licensee is hereby exempt from the requirements of Section 20.203 (e)(2) and 20.203 (f)(2), 10 CFR 20, for areas and containers within the plant, provided all entrances to the plant are conspicuously posted in accordance with Section 20.203(e)(2) and with the words, "Any area or container within this mill may contain radioactive material."

RRR 12/31/63

For the U. S. Atomic Energy Commission

Date _____

by _____
Division of Licensing and Regulation
Washington 25, D. C.

EXHIBIT C

DML:CEM
40-7603

DEC 29 1966

Commercial Discount Corporation
105 West Adams Street
Chicago, Illinois 60603

Attention: Mr. A. R. McPherson, Jr.
President

DISTRIBUTION:
Document Room w/encl.
State Health (lic. only)
Subject File w/encl.
Compliance, Region III w/encl.
N. Doulos, DML w/3 encl.
Br. Reading File w/encl.
Div. Reading File w/o encl.

Gentlemen:

Enclosed is Source Material License No. SMC-907.

Please note that this license authorizes possession and storage only of the residues containing source material and does not authorize processing of any kind. If you should desire to process the residues or conduct any other activities involving the residues, you should request an amendment to this license.

Very truly yours,

Don F. Harmon
Source & Special Nuclear Materials
Branch
Division of Materials Licensing

Enclosure:
SMC-907

cc: Leibman, Williams, Bennett, Baird and Minow
208 South LaSalle Street
Chicago, Illinois 60604

Attention: Mr. William P. Colson

OFFICE ▶	DML <i>CEM</i>	DML <i>DA</i>	<i>OKed by Troy Connor - 12/28/66</i>		<i>DA</i>
SURNAME ▶	<i>CEM</i> MacDonald	<i>DA</i> Harmon			
DATE ▶	<i>12/28/66</i>	<i>12/29/66</i>			<i>DH</i>

COPY

Form AEC-410
(1-61)

UNITED STATES
ATOMIC ENERGY COMMISSION

SOURCE MATERIAL LICENSE

Pursuant to the Atomic Energy Act of 1954, and Title 10, Code of Federal Regulations, Chapter 1, Part 40, "Licensing of Source Material," and in reliance on statements and representations heretofore made by the licensee, a license is hereby issued authorizing the licensee to receive, possess and import the source material designated below; to use such material for the purpose(s) and at the place(s) designated below; and to deliver or transfer such material to persons authorized to receive it in accordance with the regulations in said Part. This license shall be deemed to contain the conditions specified in Section 183 of the Atomic Energy Act of 1954 and is subject to all applicable rules, regulations, and orders of the Atomic Energy Commission, now or hereafter in effect, including Title 10, Code of Federal Regulations, Chapter 1, Part 20, "Standards for Protection Against Radiation," and to any conditions specified below.

1. Name Commercial Discount Corporation		3. License No. SM 1
2. Address 105 West Adams Street Chicago, Illinois 60603		4. Expiration Date December 31, 1969
6. Source Material Uranium and Thorium		5. Docket No. 40-7603
		7. Maximum quantity of source material which licensee may possess at any one time under this license 125,000 tons of residues containing source material.

CONDITIONS

8. Authorized use (Unless otherwise specified, the authorized place of use is the licensee's address stated in Item 2 above.)

For storage only in accordance with the procedures described in the licensee's application dated December 14, 1966.

9. Authorized place of storage: 9200 Latty Avenue
Hazelwood, Missouri

1414
12/29/66
NA
12/29/66

For the U. S. ATOMIC ENERGY COMMISSION

Date of issuance _____

U. S. GOVERNMENT PRINTING OFFICE: 1962 O - 632985 Don F. Harmon
Division of Materials Licensing

COPY

EXHIBIT D

DML:DFH
40-8035

DEC 3 1969

Cotter Corporation
P. O. Box 1000
Roswell, New Mexico 88201

Attention: Mr. David F. Marcott ✓
Executive Vice President and
General Manager

Gentlemen:

Enclosed is AEC Source Material License No. SUB-1022.

Sincerely,

Original signed by
Don F. Harmon

Don F. Harmon
Source and Special Nuclear
Materials Branch
Division of Materials Licensing

Enclosure:
As stated

DISTRIBUTION:
PDR, w/encl.
State Health (license only)
Docket file, w/encl.
Branch R/F, w/encl.
Division R/F, w/o encl.
Harmon's R/F, w/encl.
CO, Region IV, w/encl.
N. Doulos, DML

N/A 00035

OFFICE	DML					
SURNAME	DFHarmon/dmb					785
DATE	12/30/69					

COPY

Form AEC-410
(1-61)

UNITED STATES
ATOMIC ENERGY COMMISSION

SOURCE MATERIAL LICENSE

Pursuant to the Atomic Energy Act of 1954, and Title 10, Code of Federal Regulations, Chapter 1, Part 40, "Licensing of Source Material," and in reliance on statements and representations heretofore made by the licensee, a license is hereby issued authorizing the licensee to receive, possess and import the source material designated below; to use such material for the purpose(s) and at the place(s) designated below; and to deliver or transfer such material to persons authorized to receive it in accordance with the regulations in said Part. This license shall be deemed to contain the conditions specified in Section 183 of the Atomic Energy Act of 1954 and is subject to all applicable rules, regulations, and orders of the Atomic Energy Commission, now or hereafter in effect, including Title 10, Code of Federal Regulations, Chapter 1, Part 20, "Standards for Protection Against Radiation," and to any conditions specified below.

Licensee		3. License No. SUB-1022
1. Name	Cotter Corporation	4. Expiration Date December 31, 1974
2. Address	P. O. Box 1000 Roswell, New Mexico 88201	5. Docket No. 40-8035
6. Source Material Uranium	7. Maximum quantity of source material which licensee may possess at any one time under this license Unlimited	

CONDITIONS

8. Authorized use (Unless otherwise specified, the authorized place of use is the licensee's address stated in Item 2 above.)
For use in accordance with the procedures described in the licensee's application dated December 16, 1969.
9. Authorized place of use: The licensee's facility located at 9200 Latty Avenue, Hazelwood, Missouri.

DA
12/30/69

Date of issuance DEC 3 1969

For the U. S. ATOMIC ENERGY COMMISSION

Original signed by
Don F. Harmon

Don F. Harmon

U. S. GOVERNMENT PRINTING OFFICE: 1962 O - 632985

Division of Materials Licensing

COPY

EXHIBIT E



UNITED STATES
ATOMIC ENERGY COMMISSION
WASHINGTON, D.C. 20545

NOV 13 1974

DEC 16 1974

RECEIVED

NOV 18 1974

E. J. McGRATH

L:FFRB:WTC
40-8035
SUB-1022

Cotter Corporation
ATTN: Mr. David P. Marcott
Executive Vice President
P. O. Box 356
Golden, Colorado 80401

Gentlemen:

In accordance with your application dated May 10, 1974 and pursuant to Title 10, Code of Federal Regulations, Part 40, Source Material License No. SUB-1022, is hereby terminated.

FOR THE ATOMIC ENERGY COMMISSION

L. C. Rouse, Chief
Fuel Fabrication and Reprocessing
Branch No. 1
Directorate of Licensing

is less clear than this notice, it is due to the quality of the document being filmed

014

1843 FL

EXHIBIT F



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7
11201 RENNER BOULEVARD
LENEXA, KS 66219

MAR 21 2014

OFFICE OF
THE REGIONAL ADMINISTRATOR

The Honorable Chris Koster
Attorney General of Missouri
P.O. Box 899
Jefferson City, MO 65102

Dear Mr. Koster:

I valued the opportunity to speak with you last week about the need to ensure continued protection of public health at the West Lake Superfund site through effective federal-state partnership. The State of Missouri and the Environmental Protection Agency have been using our respective regulatory and oversight powers to keep holding the responsible parties to their duties: controlling the SSE at Bridgeton Sanitary Landfill, separating the West Lake Landfill from the SSE, and completing selection and implementation of a protective long-term Superfund remedy at West Lake.

As we discussed, Region 7's team of experts continues taking several decisive actions at the West Lake Superfund site. The EPA intends soon to conclude an agreement with the United States Army Corps of Engineers to enlist Corps construction expertise for the isolation barrier to separate West Lake from the SSE. I will keep you and the Missouri Department of Natural Resources closely informed about the status of this project. And I concur with your recommendation that you and I promptly take that opportunity to inform the community about isolation barrier construction activities before they begin.

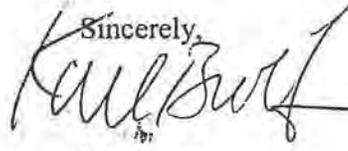
EPA's jurisdiction under the Comprehensive Environmental Response, Compensation, and Liability Act, also known as Superfund, covers release of hazardous substances wherever they have come to be located. EPA is committed to taking actions that compel the West Lake/Bridgeton PRPs to bear the costs legally required to contain and manage radiologically impacted material (RIM) resulting from the disposal of leached barium sulfate, regardless of where it is located at the site.

EPA's jurisdiction extends to wherever hazardous substances are located within the landfill complex. We will of course, closely cooperate with your office and the MDNR to align CERCLA work with PRP duties compelled by your Order at Bridgeton. I assure you that EPA work at the West Lake/Bridgeton NPL site will respect state authority while ensuring consistent site evaluations and appropriate allocation of federal and state responsibilities.

The Order your Office established in the Circuit Court of St. Louis County exercised State environmental-protection authorities which EPA considers complementary to our CERCLA powers. The State's lead in compelling the PRPs to control the subsurface smoldering event better enables this agency to compel the PRPs to isolate Bridgeton's SSE from West Lake. I believe that continuing to coordinate state and federal work will best accomplish our mutual goal to keep the public protected from environmental contaminants and nuisances, no matter their origin within the NPL site.



We will continue to coordinate and communicate with you and your colleagues in the State of Missouri as we work to accomplish our shared goal of protecting the health of all Missourians.

Sincerely,


Karl Brooks

EXHIBIT G



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

11201 Renner Boulevard
Lenexa, Kansas 66219

NOV 17 2016

ADVANCE COPY VIA ELECTRONIC MAIL

Richard S. Lewis
Hausfeld, LLP
1700 K Street, NW
Suite 650
Washington, DC 20006

Daniel T. DeFeo
DeFeo & Kolker, LLC
1627 Main Street, Suite 801
Kansas City, Missouri 64108

RE: Request for Data

Dear Counsel:

On November 15, 2016, the U.S. Environmental Protection Agency (EPA) was provided a copy of a Petition filed by you on behalf of your clients, Michael and Robbin Dailey. This Petition contains certain allegations regarding radioactive contamination at the Dailey's property, some of which include the following:

- Paragraph 7: "Dusts inside the Dailey Home were shown to contain radioactive Th-230 at levels at least two hundred times higher than Background levels..."
- Paragraph 12: "Plaintiffs first learned that the Dailey Property was contaminated with radioactive material in 2016."
- Paragraph 90: "The Dailey Property is contaminated by radioactive material."
- Paragraph 91: "Samples taken on and around the Dailey Property confirm a highly elevated presence of radioactive particles in the soil and dust."
- Paragraph 92: "Dust samples from inside the Dailey Home contain decay products of radioactive isotopes U-238..."

We have also received your November 16, 2016 letter to EPA Region 7 Regional Administrator Mark Hague providing the December 2015 published journal article, map and summary data table. As a public health agency, EPA takes very seriously any information that relates to the actual or potential exposure to hazardous substances, pollutants or contaminants. EPA notes that the samples identified in the summary table were collected in July 2016, but this information is only now being provided to EPA several months later.



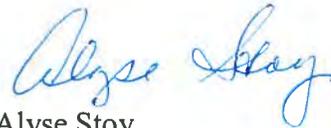
Page 2

Out of an abundance of caution, EPA is developing a plan for sampling of dusts and soils at the Dailey home and other areas in Bridgeton. In order for us to develop a scientifically sound plan, as well as fully assess the potential for unacceptable exposure to radioactive contaminants, EPA needs the relevant data that you have. We ask that you immediately provide the soil and dust data not just from the Dailey residence associated with the allegations referenced by you in the Petition, but also any other similar data you possess from nearby residences, businesses and publicly accessible locations in that area. EPA will utilize this data to inform the development of a sampling plan.

Specifically, EPA requests all laboratory data, laboratory reports, and any Quality Assurance Project Plan or other written procedures that describe how the samples were collected, analyzed and validated. Further, EPA asks that you provide documentation identifying the specific locations where samples were collected. Once EPA has an opportunity to review this data and methods employed to collect and analyze these samples our Agency will determine the appropriate next steps.

EPA continues to emphasize that our Agency will evaluate all scientifically valid data, and we greatly appreciate your expedited attention in providing this information. We understand that the allegations in the Petition have caused great concern for your client and others in the Bridgeton community, and we take these concerns seriously. Please do not hesitate to contact me at (913) 551-7826 if you have any questions.

Sincerely,



Alyse Stoy,
Associate Deputy Regional Counsel

EXHIBIT 6

40-8035

LAW OFFICES
EDWARD J. McGRATH
201 NORTH FREDERICK AVENUE
GAITHERSBURG, MARYLAND 20760

(301) 948-2480

May 10, 1974



W. Burkhardt, Senior Chemical Engineer
Fuels Fabrication & Reprocessing Branch
Licensing, Regulatory
Room 435, East-West Towers
UNITED STATES ATOMIC ENERGY COMMISSION
Washington, D. C. 20545

Re: Cotter Corporation, Source Materials License No. SUB-1022

Dear Mr. Burkhardt:

We enclose four copies of the Certification of Status with respect to the source materials license of Cotter Corporation and constituting notification that the corporation no longer possesses any radioactive material subject to United States Atomic Energy Commission licensing requirements.

Submitted in connection with the certification is a letter from Phillip K. Feeney, P.E., of the firm of Ryckman, Edgerley, Tomlinson & Associates, Inc., consulting environmental engineers, to which are attached plats of the Latty Avenue storage site where the licensed material formerly held by Cotter Corporation was deposited. The plat which we have marked "Attachment A" indicates the locations of the buildings and of the materials which were stored on the site. The plat which we have marked "Attachment B" contains the results of a radiological survey conducted by Ryckman, Edgerley, Tomlinson & Associates, Inc. subsequent to removal of all materials stored on the site.

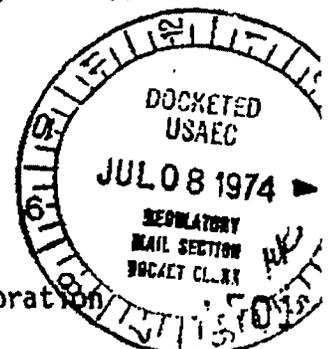
Based upon the work performed by Cotter Corporation, the work of contractors hired by Cotter Corporation in connection with removal and cleanup, and upon the monitoring of Ryckman, Edgerley, Tomlinson & Associates, Inc., we are of the opinion that the Latty Avenue storage site and all appurtenances have been decontaminated. Cotter Corporation has removed to its mill in Colorado all materials with radioactivity levels meeting or exceeding that which subjects holders to license requirements.

Since all source materials now owned or held by Cotter Corporation are situated in Colorado, and subject to the license issued to the corporation by the State of Colorado, we request at this time that the United States Atomic Energy Commission source materials license issued to Cotter Corporation be terminated.

Please contact me should you wish further information.

Sincerely yours,

Edward J. McGrath
Attorney for Cotter Corporation



EJMcG/jmc

Copy to: David P. Marcott

FROM: Cotter Corporation North Frederick Avenue Gaithersburg, Maryland 20760		DATE OF DOCUMENT: May 10, 1974	DATE RECEIVED: May 14, 1974	NO.: 1501	
TO: Burkhardt, Fuels & Fab. USAEC		LTR.: X	MEMO:	REPORT:	OTHER:
CLASSIF.: U		ORIG.:	CO:	OTHER:	DATE ANSWERED:
POST OFFICE:		ACTION NECESSARY <input type="checkbox"/>	CONCURRENCE <input type="checkbox"/>	COMMENT <input type="checkbox"/>	BY:
REG. NO.:		FILE CODE: Jacket 40-8035			
DESCRIPTION: (Must Be Unclassified) Certification of Status with respect to RSI constituting notification that corp. no longer possesses radioactive subject to AEC licensing requirements		REFERRED TO	DATE	RECEIVED BY	DATE
ENCLOSURES:		RSI/1 extra Distribution:	7-8-74		
REMARKS:		RSI Burkhardt Reg. File cy FBI NO			
				1501	



UNITED STATES
ATOMIC ENERGY COMMISSION
WASHINGTON, D.C. 20545

CERTIFICATION OF STATUS OF SOURCE MATERIAL ACTIVITIES
UNITED STATES ATOMIC ENERGY COMMISSION

LICENSE NUMBER
SUB-1022

LICENSEE: Cotter Corporation

ADDRESS: P. O. Box 352, 11011 W. 6th Avenue, Suite 302, Lakewood, Colorado

The licensee and any individual executing this certification on behalf of the licensee certify that (check appropriate item(s) below):

No source materials have been procured and/or possessed by licensee.

All source materials procured and/or possessed by licensee under Source Material License No. _____ ;

(1) have or will be prior to expiration of the above license transferred to _____
(Institution, firm, hospital, person, etc.)

_____ which has Source Material License No. _____

(2) have been or will be disposed of in compliance with 10 CFR 20 prior to expiration of this license.

Certifying Official
EDWARD J. McGRATH, Attorney for Cotter Corporat
Date: May 9, 1974

Please return 4 copies to:
U. S. Atomic Energy Commission
Materials Branch, Directorate of
Licensing
Washington, D. C. 20545

St. Louis, Missouri 63141
(314) 434-6960
Cable: RETA STL



Ryckman/Edgerley/Tomlinson & Associates, Inc.

May 1, 1974
RETA-780

Mr. David P. Marcott
Executive Vice President
Cotter Corporation
Post Office Box 352
Golden, Colorado 80401

Dear Dave:

Attached are two (2) sketches of the Latty Avenue Storage Site. The first depicts the original placement of the residues and buildings. Building "D" was the only building used for the actual drying operation.

The second sketch shows level of activity (MR/hr.) on April 29, 1974, after decontamination had been completed. As you can see, all of the locations fall below the allowable 0.6 MR/hr. (approximately 2,000 counts per minute) level.

If you have any questions or comments, or require additional information, please contact me.

Very truly yours,

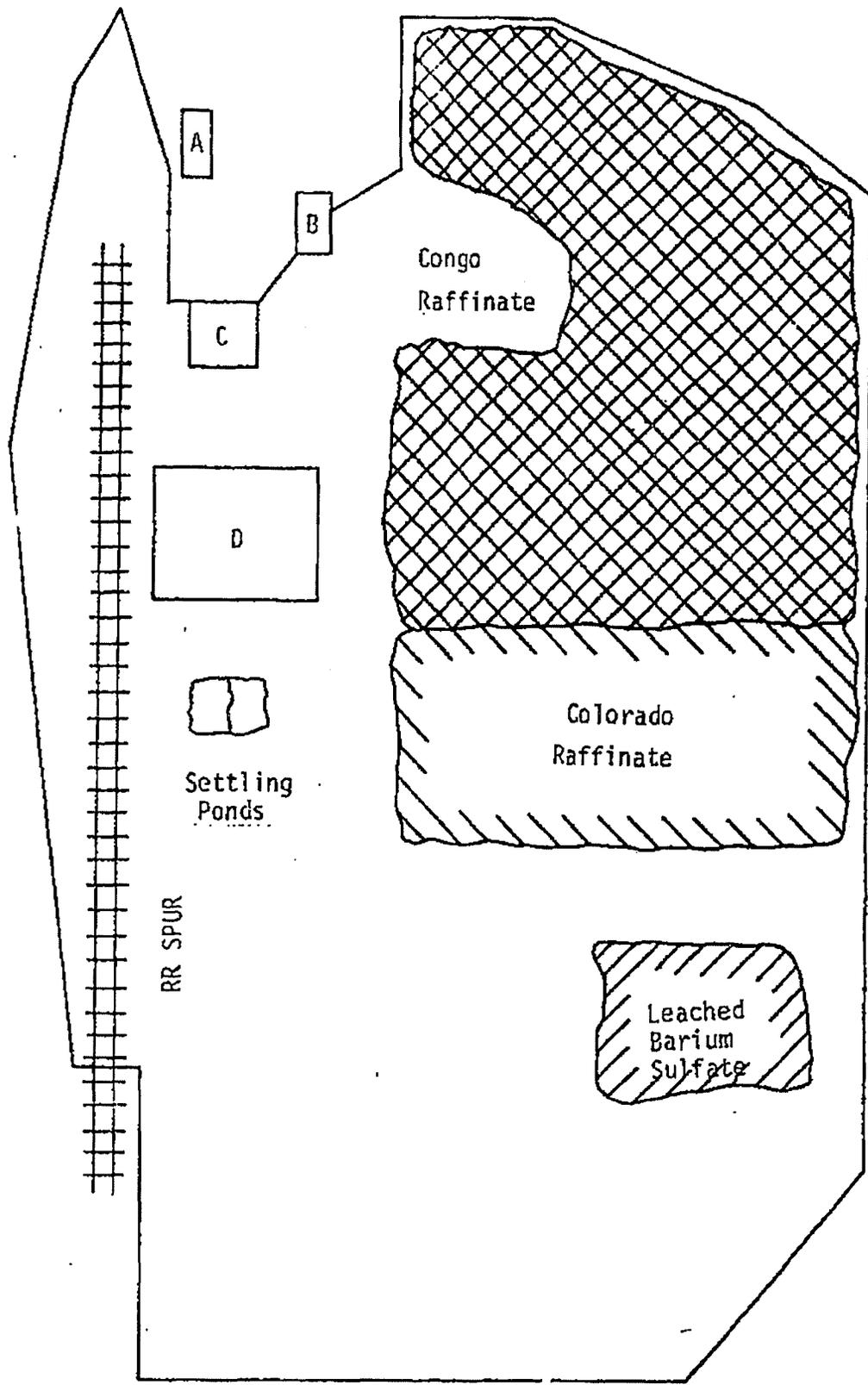
Phillip K. Feeney/pac
Phillip K. Feeney, P.E.
Associate

Enclosures

PKF:pac

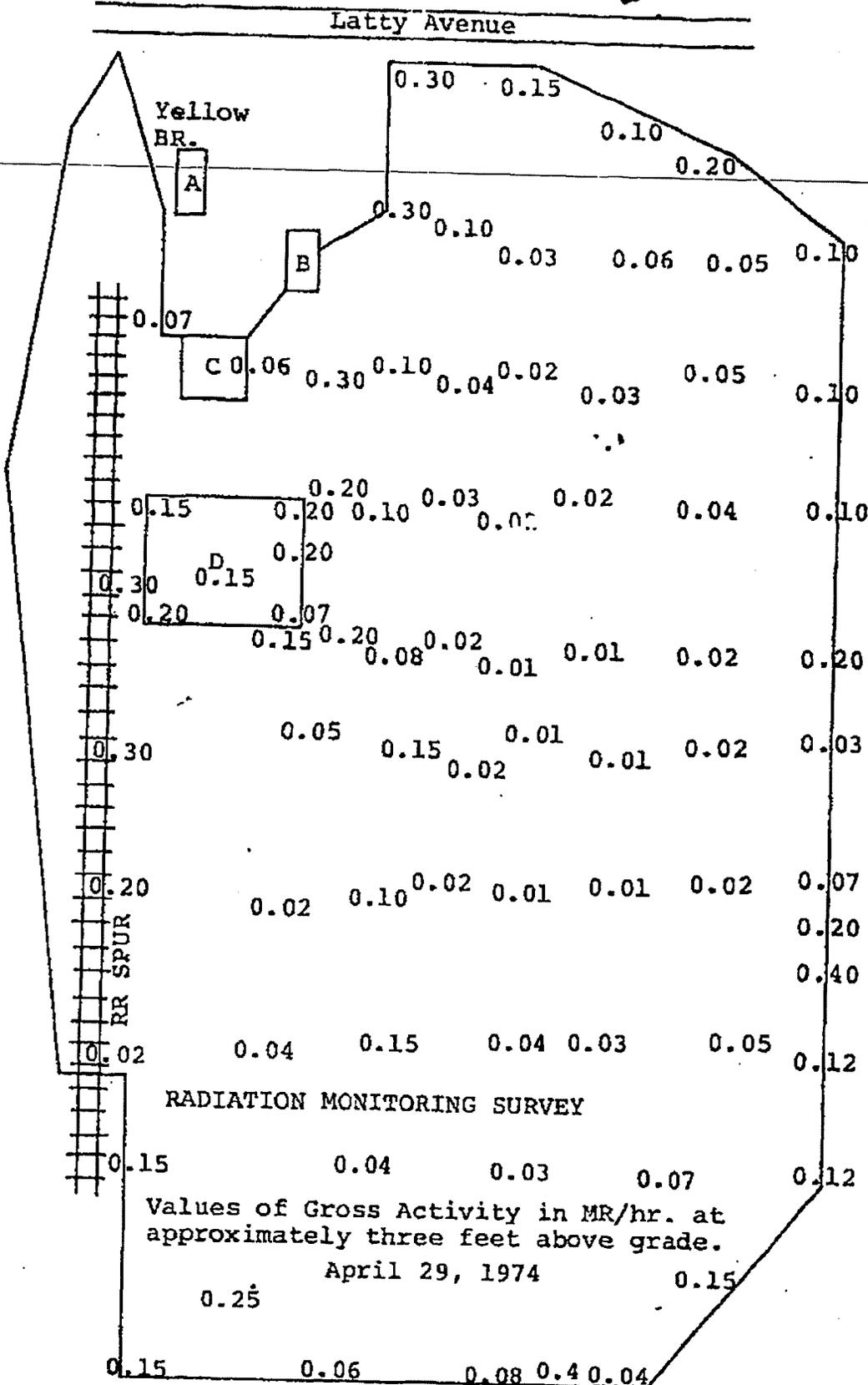
- Offices:
- McLean, Virginia (Washington, D. C.)
- Dayton, Ohio
- Memphis, Tennessee
- Denver, Colorado
- Tampa, Florida
- New Orleans, Louisiana
- Arlington, Texas (Dallas-Ft. Worth)
- Houston, Texas
- Casper, Wyoming
- Chicago, Illinois
- Northumberland, England
- Rome, Italy

Latty Avenue



Sketch not to scale

COTTER CORPORATION
LATTY AVENUE STORAGE SITE
HAZLEWOOD, MISSOURI



RADIATION MONITORING SURVEY

Values of Gross Activity in MR/hr. at approximately three feet above grade.

April 29, 1974



Sketch not to scale.

COTTER CORPORATION
LATTY AVENUE STORAGE SITE
HAZLEWOOD, MISSOURI

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS JOHN C. KITCHIN, JR. and NORTH WEST AUTO BODY COMPANY, on behalf of themselves and all others

DEFENDANTS Republic Services, Inc.; Allied Services, LLC and Bridgeton Landfill, LLC

(b) County of Residence of First Listed Plaintiff St. Louis (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Foreign (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number) Ryan A. Keane Keane Law LLC (314) 391-4700 7777 Bonhomme Ave., Ste. 1600 St. Louis, MO 63105

Attorneys (If Known) William G. Beck Lathrop Gage LLP (816) 292-2000 2345 Grand Blvd, Suite 2200 Kansas City, MO 64108

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)
Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Price-Anderson Act (42 USC 2011, et seq.); CERCLA (42 USC 9601, et seq.)
Brief description of cause: Class action alleging property damage and injury due to radioactive contamination, preempted by Price-Anderson

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$
CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE Honorable Catherine D. Perry DOCKET NUMBER 4:17-cv-00024

DATE 04/27/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ William G. Beck

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.

