

**BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD**

RECEIVED
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JAN 19 2006

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
)
CSX TRANSPORTATION, INC.,)
a Virginia corporation,)
)
Respondent.)

PCB 06-51
(Enforcement – Air, Water, Land)

NOTICE OF FILING

To: Kristen Laughridge
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, IL 62706

Carol Webb, Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Post Office Box 19274
Springfield, IL 62794-9274

Dorothy M. Gunn
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, IL 60601

PLEASE TAKE NOTICE that today I have filed with the Office of the Clerk of the Pollution Control Board the **RESPONDENT'S RESPONSE TO MOTION TO STRIKE and AMENDED ANSWER and AFFIRMATIVE DEFENSES** of CSX Transportation, Inc. in the above titled matter. A copy is hereby served upon you.

CSX TRANSPORTATION, INC.

By: _____

David L. Rieser
One of its Attorneys

DATED: January 19, 2006

MCGUIREWOODS LLP
77 West Wacker Drive, Suite 4100
Chicago, Illinois 60601
(312) 849-8100

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RESPONSE TO MOTION TO STRIKE

CSX Transportation, Inc. ("CSXT") by and through its counsel McGuireWoods LLP, files this response to the Plaintiff's motion to strike and states in support as follows.

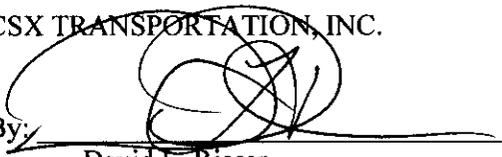
CSXT does not agree that its Affirmative Defenses were legally insufficient in that they gave Plaintiff sufficient notice of the issues which would be raised in defending this complaint. In the interest of resolving this matter more expeditiously and preserving state resources, however, CSXT files the attached Amended Answer and Affirmative Defenses which provide additional factual and legal bases in support of the Affirmative Defenses. In light of this amended pleading, Plaintiff's motion should be dismissed with leave to refile should Plaintiff object to these Amended Affirmative Defenses.

Wherefore for the reasons stated herein, CSXT respectfully requests the Board to dismiss Plaintiff's Motion to Strike.

Dated: January 19, 2006

Respectfully submitted,

CSX TRANSPORTATION, INC.

By: 

David L. Rieser
One of its Attorneys

McGuireWoods LLP
77 West Wacker, Suite 4100
Chicago, IL 60601
Telephone: 312/849-8100

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AMENDED ANSWER and
AFFIRMATIVE DEFENSES

NOW COMES Respondent, CSX Transportation, Inc. ("CSXT"), by and through its attorneys, McGuireWoods LLP, and for its Amended Answer and Affirmative Defenses states and alleges as follows.

COUNT I

1. This allegation states a legal conclusion and no further answer is required.
2. This allegation states a legal conclusion and no further answer is required.
3. This allegation states a legal conclusion and no further answer is required.
4. CSXT admits that it is a Virginia corporation but denies all other allegations stated herein.
5. CSXT admits that a derailment occurred on December 22, 2005 near Paris, Illinois, but denies the remaining allegations of Paragraph 5.
6. CSXT admits the allegations of Paragraph 6.
7. CSXT denies the allegations of Paragraph 7 but states that approximately 5,600 gallons of diesel fuel was released from the engines.
8. CSXT admits the allegations of Paragraph 8.
9. CSXT admits the allegations of Paragraph 9.

10. CSXT does not admit or deny the allegations of Paragraph 10 but demands strict proof thereof.
11. CSXT denies the allegations of Paragraph 11 but states that HCl was released to the field adjacent to the tracks.
12. CSXT denies the allegations of Paragraph 12, but states that the City of Paris and the Illinois EPA ordered precautionary evacuations in the surrounding area.
13. CSXT denies the allegations of Paragraph 13 but states that HCl is considered corrosive.
14. This allegation states a legal conclusion and no further answer is required.
15. This allegation states a legal conclusion and no further answer is required.
16. CSXT denies the allegations of Paragraph 16.

Wherefore, CSXT respectfully requests the Board to deny all relief requested by the Complainant.

COUNT II

- 1 – 14. CSX restates and incorporates by references its answers to Paragraphs 1 – 14 of Count I as Paragraphs 1 – 14 of this Count II as though fully stated herein.
15. This allegation states a legal conclusion and no answer is required.
 16. This allegation states a legal conclusion and no answer is required.
 17. CSX denies the allegations of Paragraph 17.
 18. CSX denies the allegations of Paragraph 18.
 19. CSX denies the allegations of Paragraph 19.

Wherefore, CSX respectfully requests the Board to deny all relief requested by the Complainant.

COUNT III

1 – 14. CSX restates and incorporates by references its answers to Paragraphs 1 – 14 of Count I as Paragraphs 1 – 14 of this Count III as though fully stated herein.

15. This allegation states a legal conclusion and no answer is required.

16. This allegation states a legal conclusion and no answer is required.

17. This allegation states a legal conclusion and no answer is required.

18. CSX denies the allegations of Paragraph 18.

19. CSX admits the allegations of Paragraph 19.

20. This allegation states a legal conclusion and no answer is required.

21. CSX denies the allegations of Paragraph 21.

22. CSX denies the allegations of Paragraph 22.

Wherefore, CSX respectfully requests the Board to deny all relief requested by the Complainant.

AFFIRMATIVE DEFENSES

1. Plaintiff failed to comply with the requirements of Section 31 of the Illinois Environmental Protection Act in that CSX responded appropriately to the IEPA's Notice of Violation, it presented a valid and complete Compliance Commitment Agreement and the IEPA unreasonably refused to accept CSX's Compliance Commitment Agreement. The Agency's stated basis for denial, the need for additional monitoring, could have been addressed through further negotiation.

2. The Board has no jurisdiction to hear actions or issue injunctions pursuant to Section 43 of the Illinois Environmental Protection Act since Section 43 only authorizes

Illinois courts to issue such injunctions. *Clean the Uniform Company v. Aramark Uniform & Career Apparel, Inc.*, 2002 WL 31545663, PCB 03-21, November 7, 2002.

3. Even if the Board had such jurisdiction, no action can be brought pursuant to Section 43 since no current emergency is alleged. According to the allegations of the complaint, the spill occurred in December of 2004, no allegations are made of an ongoing emergency and allegations asserting jurisdiction under Section 43 rely on the “emergency nature at the time of the derailment.” (Complaint, Count I, Paragraph 3)

4. The Board has no basis to issue an order to CSXT to “cease and desist from further violations of the Act” since the releases alleged in the complaint have been addressed through a Compliance Commitment Agreement presented to the Illinois Environmental Protection Agency. As a result of CSXT’s activities the alleged imminent hazards discussed in the complaint have been addressed and no ongoing violations have been alleged from which CSXT could be ordered to “cease and desist.”

5. The Board has no jurisdiction to penalize CSXT with regard to the derailment. CSXT’s operations are regulated solely by the federal government pursuant to the Interstate Commerce Termination Act. Any fault or penalties associated with the derailment itself could only be assessed pursuant to that statute.

6. The Board has no basis to award attorneys fees, since the Attorney General has not alleged (and cannot allege) that the violations stated in the complaint were the result of “willful, knowing or repeated violations” of the Illinois Environmental Protection Act as required pursuant to Section 42(f).

Wherefore, CSXT respectfully requests that the Board dismiss this complaint with prejudice.

Respectfully submitted,

CSX TRANSPORTATION, INC.

By: 

David L. Rieser
One of its Attorneys

Dated: January 19, 2006

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CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached Respondent's Response to Motion to Strike and Amended Answer and Affirmative Defenses upon those listed on the attached Notice of Filing by first class mail, postage affixed.

Respectfully submitted,

CSX TRANSPORTATION, INC.

By: _____

David L. Rieser
One of its Attorneys

Dated: January 19, 2006

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77 West Wacker, Suite 4100
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