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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD **OCT 19 2004**

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
)
REILLY INDUSTRIES, INC.,)
)
Respondent.)

PCB No. 03-182
(Enforcement -- Air, Water)

NOTICE OF FILING

TO: Ms. Dorothy M. Gunn
Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601
(VIA FIRST CLASS MAIL)

Carol Sudman, Esq.
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Post Office Box 19274
Springfield, Illinois 62794-9276
(VIA FIRST CLASS MAIL)

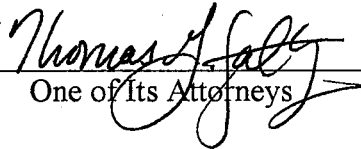
(SEE PERSONS ON ATTACHED SERVICE LIST)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board an original and nine copies of **DEFENDANT REILLY INDUSTRIES, INC.'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S SUPPLEMENTAL COMPLAINT**, a copy of which is hereby served upon you.

Respectfully submitted,

REILLY INDUSTRIES, INC.,
Respondent,

Dated: October 18, 2004

By: 
One of Its Attorneys

N. LaDonna Driver
Thomas G. Safley
HODGE DWYER ZEMAN
3150 Roland Avenue
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CERTIFICATE OF SERVICE

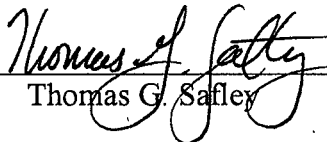
I, Thomas G. Safley, the undersigned, certify that I have served the attached
DEFENDANT REILLY INDUSTRIES, INC.'S ANSWER AND AFFIRMATIVE
DEFENSES TO PLAINTIFF'S FIRST SUPPLEMENTAL COMPLAINT, upon:

Ms. Dorothy M. Gunn
Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

Thomas Davis, Esq.
Office of the Attorney General
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706

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

by depositing said documents in the United States Mail, postage prepaid, in Springfield,
Illinois, on October 18, 2004.


Thomas G. Safley

REL:005/Filings/NOF-COS - Answer

OCT 19 2004

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PEOPLE OF THE STATE OF ILLINOIS,)	
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Complainant,)	
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)	(Enforcement – Air, Water)
REILLY INDUSTRIES, INC.,)	
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**DEFENDANT REILLY
INDUSTRIES, INC.'S ANSWER AND AFFIRMATIVE
DEFENSES TO PLAINTIFF'S FIRST SUPPLEMENTAL COMPLAINT**

NOW COMES Respondent REILLY INDUSTRIES, INC. ("Reilly"), by its attorneys HODGE DWYER ZEMAN, and for its Answer and Affirmative Defenses to Plaintiff's First Supplemental Complaint, states as follows:

ANSWER

COUNT I

1. Reilly has insufficient knowledge to either admit or deny the allegation of paragraph 1 that "[t]his Complaint is brought by the Attorney General on her own motion and at the request of the Illinois Environmental Protection Agency," and therefore denies this allegation. The allegation of paragraph 1 that the Complaint is brought "pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act" states a legal conclusion to which no response is required. To the extent that Paragraph 1 makes any further allegations of fact, Reilly denies the same.

2. Reilly admits the allegations of paragraph 2.

3. The allegation of paragraph 3 that "[t]he Complaint is brought pursuant to Section 31 of the Act, 415 ILCS 5/31 (2002)" states a legal conclusion to which no

response is required. Reilly admits the allegation of paragraph 3 that the Illinois EPA did provide Reilly “with notice and opportunity for a meeting with the Illinois EPA.” To the extent that paragraph 3 makes any further allegations of fact, Reilly denies the same.

4. Reilly admits the allegations of paragraph 4.

5. Reilly has insufficient knowledge as to what Complainant means by the phrase “all times relevant to this Complaint,” and therefore can neither admit or deny the allegations of Paragraph 5 to the extent that they are so qualified. Reilly admits that it currently owns and operates, and on the specific dates referenced in the Complaint owned and operated, “a coal tar distillation process” at the address alleged. To the extent that paragraph 5 makes any further allegations of fact, Reilly denies the same.

6. Reilly admits the allegation of paragraph 6 that “[t]he facility distills coal tars into light oils, creosotes, and pitches in six batch-type stills.” Reilly denies that “[a] seventh still at the site is not currently used for processing,” but rather, affirmatively states that a seventh still at the facility is used as a continuous unit for coal tar oil distillation. Reilly admits that this seventh still “is operated continuously.” Reilly denies that “[t]he other five stills are charged sequentially, usually for a period of 20 hours.” Rather, Reilly affirmatively states that all six stills in which the facility distills coal tars normally are operated in a 20-hour batch cycle. Reilly admits that, as to these six stills, “[a]fter [each] still is filled with coal tar, natural gas burners are ignited.” Reilly denies that “[a]s the temperature of the tar increases, it[s] constituents are vaporized,” but, rather, affirmatively states that as the temperature of the tar increases, some of its constituents are vaporized. Reilly admits that “[t]he vapor line is indirectly cooled with

water forming condensed liquid,” and that “[c]ondensed liquid from the vapor lines are [sic] drained into receiving pans that hold the various products.” Reilly admits that “[l]iquids are pumped from the receiving pans into the appropriate tanks.” Reilly denies that “[e]mission units at the facility include six receiving pans that are controlled by a scrubber,” but, rather, affirmatively states that emission units at the facility include seven receiving pans that are vented to a scrubber. To the extent that Paragraph 6 makes any other allegations of fact, Reilly denies the same.

7. Reilly denies that construction permit number 99040035 was issued on May 3, 2000. Reilly affirmatively states that construction permit number 99040035 was issued on March 23, 2000. With regard to Complainant’s allegations regarding the terms of the construction permit, Reilly states that the construction permit speaks for itself. To the extent that paragraph 7 makes any further allegations of fact, Reilly denies the same.

8. Reilly admits that the construction permit was revised on March 2, 2001. Reilly admits that the March 2, 2001 permit revision and extension was issued due to an increase in production. Reilly denies that the March 2, 2001 permit revision and extension was issued to add two additional storage tanks. To the extent that paragraph 8 makes any further allegations of fact, Reilly denies the same.

9. The requirements of the construction permit speak for themselves. Reilly admits that it planned to conduct a stack test on the scrubber. Reilly denies that a test protocol was submitted to Illinois EPA on March 22, 2001. Reilly affirmatively states that a test protocol was submitted to Illinois EPA on March 27, 2001. Reilly admits that a scrubber test was conducted on April 3, 2001. Reilly admits that Illinois EPA

representatives were present at the facility on April 3, 2001. Reilly has insufficient knowledge to admit or deny what Illinois EPA representatives witnessed on April 3, 2001, and therefore denies the same. To the extent that paragraph 9 makes any further allegations of fact, Reilly denies the same.

10. Reilly admits that test results were submitted to the Illinois EPA on July 26, 2001, but has insufficient knowledge to either admit or deny the remaining allegations of paragraph 10, and therefore denies the same.

11. Reilly admits that additional scrubber tests were scheduled for August 15, 2001. Reilly admits that Illinois EPA representatives were present on August 15, 2001. Reilly denies that the August 15, 2001, test was aborted due to a decrease in the scrubber's efficiency. Reilly affirmatively states that the August 15, 2001, test was aborted due to a loss of cooling water in the scrubber. Reilly denies that raw data from the August 15, 2001, test was submitted to Illinois EPA on August 17, 2001. Reilly affirmatively states that data from the August 15, 2001, test was submitted to Illinois EPA on October 17, 2001. Reilly admits the allegations in the final sentence of paragraph 11. To the extent that paragraph 11 makes any further allegations of fact, Reilly denies the same.

12. In response to Complainant's allegations regarding the terms of the construction permit, Reilly states that the construction permit speaks for itself. Reilly admits that it continues to operate the stills and the scrubber. To the extent that paragraph 12 makes any further allegations of fact, Reilly denies the same.

13. Reilly admits that a scrubber test was conducted on May 21, 2002 and that final results of the test were submitted to Illinois EPA on August 28, 2002. Reilly denies that the May 21, 2002 test was aborted due to test results. Reilly affirmatively states that the May 21, 2002 test was aborted when the flow regulator controlling the water temperature for the heat exchanger on the scrubber failed. To the extent that paragraph 13 makes any further allegations of fact, Reilly denies the same.

14. The statutory section quoted in paragraph 14 speaks for itself, and therefore Reilly has no response to this allegation. To the extent that paragraph 14 states any allegations of fact, Reilly denies the same.

15. The statutory section quoted in paragraph 15 speaks for itself, and therefore Reilly has no response to this allegation. To the extent that paragraph 15 states any allegations of fact, Reilly denies the same.

16. The statutory section quoted in paragraph 16 speaks for itself, and therefore Reilly has no response to this allegation. To the extent that paragraph 16 states any allegations of fact, Reilly denies the same.

17. The regulation quoted in paragraph 17 speaks for itself, and therefore Reilly has no response to this allegation. To the extent that paragraph 17 states any allegations of fact, Reilly denies the same.

18. The allegations of paragraph 18 state a legal conclusion that does not call for a response. To the extent that paragraph 18 contains any factual allegations, Reilly denies the same. Reilly further affirmatively states that the facility has six, not five, batch stills.

19. The data from the April 3, 2001, stack test speak for themselves. Reilly denies the characterization of the stack test data set forth in paragraph 19. Reilly affirmatively states that during the April 3, 2001, test, the scrubber achieved greater than 90% removal efficiency in the initial and final stages of the batch and that approximately 89% overall VOM reduction efficiency was achieved over the entire batch cycle.

20. Reilly denies the allegations of paragraph 20. Reilly affirmatively states that the August 15, 2001, test was aborted due to loss of cooling water in the scrubber, and that prior to the cooling water loss, the scrubber achieved greater than 90% VOM reduction efficiency.

21. Reilly denies that the May 21, 2002, test indicated that the scrubber's VOM removal efficiency was 73.79%. Reilly affirmatively states that the test was aborted prior to completion. Reilly further affirmatively states that the scrubber achieves greater than 90% removal efficiency in the initial and final stages of a batch and, therefore, aborting a test prior to completion results in overall efficiency results that are lower than what would be achieved if the test were allowed to continue through completion of a batch. Reilly further affirmatively states that the testing, which was conducted over the first twelve hours of the batch, resulted in efficiency for two of the four three-hour sample runs of 88.41% to 92.33%.

22. Reilly admits the allegations of paragraph 22.

23. The allegations of paragraph 23 state a legal conclusion that does not call for a response. To the extent that paragraph 23 contains any factual allegations, Reilly denies the same.

24. The allegations of paragraph 24 state a legal conclusion that does not call for a response. To the extent that paragraph 24 contains any factual allegations, Reilly denies the same.

COUNT II

CONSTRUCTION PERMIT VIOLATIONS

1-23. Reilly repeats and realleges its answers to paragraphs 1 through 23 of Count I as its answers to paragraphs 1 through 23 of Count II.

24. The statutory section quoted in paragraph 24 speaks for itself, and therefore Reilly has no response to this allegation. To the extent that paragraph 24 states any allegations of fact, Reilly denies the same.

25. The permit condition quoted in paragraph 25 speaks for itself, and therefore Reilly has no response to this allegation. To the extent that paragraph 25 states any allegations of fact, Reilly denies the same.

26. The allegations of paragraph 26 state a legal conclusion that does not call for a response. To the extent that paragraph 26 contains any factual allegations, Reilly denies the same.

27. The allegations of paragraph 27 state a legal conclusion that does not call for a response. To the extent that paragraph 27 contains any factual allegations, Reilly denies the same.

COUNT III

OPERATING PERMIT VIOLATIONS

1-18. Reilly repeats and realleges its answers to paragraphs 1 through 18 of Count I as its answers to paragraphs 1 through 23 of Count III.

19. The regulation quoted in paragraph 19 speaks for itself, and therefore Reilly has no response to this allegation. To the extent that paragraph 19 states any allegations of fact, Reilly denies the same.

20. The allegations of paragraph 20 state a legal conclusion that does not call for a response. To the extent that paragraph 20 contains any factual allegations, Reilly denies the same.

21. The allegations of paragraph 21 state a legal conclusion that does not call for a response. To the extent that paragraph 21 contains any factual allegations, Reilly denies the same.

COUNT IV

WASTE MANAGEMENT STANDARD VIOLATIONS

1-5. Reilly repeats and realleges its answers to paragraphs 1 through 5 of Count I as its answers to paragraphs 1 through 5 of Count IV.

6. Reilly admits that “[i]n January 1996, Reilly ceased production of coal tar products and creosote” at the facility. Reilly admits the allegations of the second, fourth, and fifth sentences of paragraph 6. In response to the third sentence of paragraph 6, Reilly denies that it “returned to a full production facility” in “January 2000,” but, rather, affirmatively states that startup occurred in September 1999. In response to the sixth

sentence of paragraph 6, Reilly denies that at the facility, “crude coal tar is distilled in seven stills,” but rather, affirmatively states that at the facility, crude coal tar is distilled in six batch stills, and the seventh still is used primarily for continuous distillation of the oils from the six batch stills. Reilly admits the allegation of the seventh sentence of paragraph 6 that “[t]he cuts off of these stills are water, light oil, heavy oil, creosote and final products.” In response to the eighth sentence in paragraph 6, Reilly denies that as a result of distillation at the facility, “[t]he final products include 100° Pitch, 60° Pitch, 85° Pitch, and emulsion-based tar,” but rather affirmatively states that the final products of distillation at the facility include 110°C, 60°C, and 85°C softening point pitches, and emulsion-based tar (RT-12). To the extent that paragraph 6 states any further allegations of fact, Reilly denies the same.

7. Reilly admits the allegations of paragraph 7.

8. Reilly admits the allegations of paragraph 8.

9. The statutory section quoted in paragraph 9 speaks for itself, and therefore Reilly has no response to this allegation. To the extent that paragraph 9 states any allegations of fact, Reilly denies the same.

10. Reilly admits that on June 28, 2000, and July 24, 2000, the Illinois EPA conducted inspections of the facility. Reilly has insufficient knowledge to either admit or deny what “Illinois EPA observed” during the inspections, and therefore denies the remaining allegations of paragraph 10.

11. Reilly has insufficient knowledge to either admit or deny the allegations of paragraph 11 regarding what “the weekly container inspection records showed” to Illinois

EPA. Complainant's allegation that "Reilly exceeded the ten-pound reportable quantity for benzene (D018)" states a legal conclusion that does not call for a response. Reilly admits that it reported the release to the Illinois Emergency Management Agency ("IEMA") on September 8, 2000. To the extent that paragraph 11 makes any further factual allegations, Reilly denies the same.

12. Reilly has insufficient knowledge to either admit or deny the allegations of paragraph 12 regarding what Illinois EPA "observed" or "noted," and therefore denies the allegations contained in the first five sentences of paragraph 12. Reilly specifically denies, however, that Illinois EPA "observed" any leak of "crude coal tar tank bottoms." In response to the sixth sentence of paragraph 12, Reilly does not know what Complainant means by "run-on, run-off protection," and thus has insufficient knowledge to either admit or deny the allegations of this sentence, and therefore denies the same. Reilly further affirmatively states that the pad is sloped to a sewer basin in order to prevent run-off. To the extent that Paragraph 12 makes any further factual allegations, Reilly denies the same.

13. Reilly has insufficient knowledge to either admit or deny the allegations of paragraph 13 as to what Illinois EPA "observed," and therefore denies the allegations of paragraph 13. Reilly further specifically denies that "roll-off box 20417" contained "crude coal tar tank bottoms."

14. The allegations of paragraph 14 state a legal conclusion that does not call for a response. To the extent that paragraph 14 contains any factual allegations, Reilly denies the same.

COUNT V

RCRA PERMIT VIOLATIONS

1-5. Reilly repeats and realleges its answers to paragraphs 1 through 5 of Count I as its answers to paragraphs 1 through 5 of Count V.

6-13. Reilly repeats and realleges its answers to paragraphs 6 through 13 of Count IV as its answers to paragraphs 6-13 of Count V.

14. The statutory section quoted in paragraph 14 speaks for itself, and therefore Reilly has no response to this allegation. To the extent that paragraph 14 states any allegations of fact, Reilly denies the same.

15. The regulation quoted in paragraph 15 speaks for itself, and therefore Reilly has no response to this allegation. To the extent that paragraph 15 states any allegations of fact, Reilly denies the same.

16. The regulation quoted in paragraph 16 speaks for itself, and therefore Reilly has no response to this allegation. To the extent that paragraph 16 states any allegations of fact, Reilly denies the same.

17. The regulation quoted in paragraph 17 speaks for itself, and therefore Reilly has no response to this allegation. To the extent that paragraph 17 states any allegations of fact, Reilly denies the same.

18. The regulation quoted in paragraph 18 speaks for itself, and therefore Reilly has no response to this allegation. To the extent that paragraph 18 states any allegations of fact, Reilly denies the same.

19. The regulation quoted in paragraph 19 speaks for itself, and therefore Reilly has no response to this allegation. To the extent that paragraph 19 states any allegations of fact, Reilly denies the same.

20. The regulation quoted in paragraph 20 speaks for itself, and therefore Reilly has no response to this allegation. To the extent that paragraph 20 states any allegations of fact, Reilly denies the same.

21. Reilly has insufficient knowledge to either admit or deny the allegations of paragraph 21 regarding what "Illinois EPA observed," and therefore denies the allegations of paragraph 21. Reilly further specifically denies that "land disposed" of "K147" or any other material at the facility, as alleged, and specifically denies Complainant's allegation that it did so.

22. The allegations of paragraph 22 state legal conclusions that do not call for a response. To the extent that paragraph 22 contains any factual allegations, Reilly denies the same. Reilly further specifically denies that it "land disposed" of "K147" or any other material at the facility, as alleged, and specifically denies Complainant's allegation that it did so.

COUNT VI

PREPAREDNESS AND PREVENTION VIOLATIONS

1-5. Reilly repeats and realleges its answers to paragraphs 1 through 5 of Count I as its answers to paragraphs 1 through 5 of Count VI.

6-13. Reilly repeats and realleges its answers to paragraphs 6 through 13 of Count IV as its answers to paragraphs 6-13 of Count VI.

14-15. Reilly repeats and realleges its answers to paragraphs 14 and 17 of Count V as its answers to paragraphs 14 and 15 of Count VI.

16. Reilly has insufficient knowledge to either admit or deny the allegations of paragraph 16 regarding what Illinois EPA “observed,” and therefore denies the allegations of paragraph 16. Reilly specifically denies, however, that Illinois EPA “observed” any leak of “crude coal tar tank bottoms.”

17. Reilly has insufficient knowledge to either admit or deny the allegations of the first sentence of paragraph 17 regarding what Illinois EPA “observed,” and therefore denies those allegations.

18. The allegations of paragraph 18 state a legal conclusion that does not call for a response. To the extent that paragraph 18 contains any factual allegations, Reilly denies the same.

COUNT VII

CONTINGENCY PLAN VIOLATIONS

1-5. Reilly repeats and realleges its answers to paragraphs 1 through 5 of Count I as its answers to paragraphs 1 through 5 of Count VII.

6-13. Reilly repeats and realleges its answers to paragraphs 6 through 13 of Count IV as its answers to paragraphs 6 through 13 of Count VII.

14-16. Reilly repeats and realleges its answers to paragraphs 14 and 18 through 19 of Count V as its answers to paragraphs 14 through 16 of Count VII.

17. Reilly has insufficient knowledge to either admit or deny the allegations of paragraph 17 regarding what Illinois EPA “observed,” and therefore denies the same.

Reilly admits that it submitted a written report on September 15, 2000, but denies that it failed to submit that report within "15 days after the implementation of the contingency plan." To the extent that paragraph 17 states any further allegations, Reilly denies the same.

18. The allegations of paragraph 18 state a legal conclusion that does not call for a response. To the extent that paragraph 18 contains any factual allegations, Reilly denies the same.

19. The allegations of paragraph 19 state a legal conclusion that does not call for a response. To the extent that paragraph 19 contains any factual allegations, Reilly denies the same.

20. The allegations of paragraph 20 state a legal conclusion that does not call for a response. To the extent that paragraph 20 contains any factual allegations, Reilly denies the same.

COUNT VIII

CONTAINER USE AND MANAGEMENT VIOLATIONS

1-5. Reilly repeats and realleges its answers to paragraphs 1 through 5 of Count I as its answers to paragraphs 1 through 5 of Count VIII.

6-13. Reilly repeats and realleges its answers to paragraphs 6 through 13 of Count IV as its answers to paragraphs 6 through 13 of Count VIII.

14-15. Reilly repeats and realleges its answers to paragraphs 14 and 20 of Count V as its answers to paragraphs 14 through 15 of Count VIII.

16. Reilly has insufficient knowledge to either admit or deny the allegations of paragraph 16 regarding what Illinois EPA "observed," and therefore denies the allegations of paragraph 16.

17. The allegations of paragraph 17 state a legal conclusion that does not call for a response. To the extent that paragraph 17 contains any factual allegations, Reilly denies the same.

18. The allegations of paragraph 18 state a legal conclusion that does not call for a response. To the extent that paragraph 18 contains any factual allegations, Reilly denies the same.

COUNT IX

MANIFEST AND LAND DISPOSAL RESTRICTION VIOLATIONS

1-5. Reilly repeats and realleges its answers to paragraphs 1 through 5 of Count I as its answers to paragraphs 1 through 5 of Count IX.

6-13. Reilly repeats and realleges its answers to paragraphs 6 through 13 of Count IV as its answers to paragraphs 6 through 13 of Count IX.

14. Reilly repeats and realleges its answer to paragraph 14 of Count V as its answer to paragraph 14 of Count IX.

15. The regulation quoted in paragraph 15 speaks for itself, and therefore Reilly has no response to this allegation. To the extent that paragraph 15 states any allegations of fact, Reilly denies the same.

16. Reilly admits the allegations of paragraph 16. Reilly specifically denies, however, that the waste involved was “K147 hazardous waste,” and further specifically denies that the documents at issue “were used to ship coal tar tank bottoms.”

17. The allegations of paragraph 17 state a legal conclusion that does not call for a response. To the extent that paragraph 17 contains any factual allegations, Reilly denies the same.

18. The allegations of paragraph 18 state a legal conclusion that does not call for a response. To the extent that paragraph 18 contains any factual allegations, Reilly denies the same.

COUNT X

WATER POLLUTION HAZARD VIOLATIONS IN 2000

1-5. Reilly repeats and realleges its answers to paragraphs 1 through 5 of Count I as its answers to paragraphs 1 through 5 of Count X.

6-8. Reilly repeats and realleges its answers to paragraphs 6 through 8 of Count IV as its answers to paragraphs 6 through 8 of Count X.

9. Reilly admits the allegations of paragraph 9.

10. Reilly admits the allegations of paragraph 10, except that Reilly denies that the area “impacted” by the release at issue was “15 feet wide,” and rather, Reilly affirmatively states that the area “impacted” was estimated to be 11 feet wide at its widest part.

11. Reilly admits the allegations of paragraph 11.

12. The statutory section quoted in paragraph 12 speaks for itself, and therefore Reilly has no response to this allegation. To the extent that paragraph 12 contains any factual allegations, Reilly denies the same.

13. The statutory section quoted in paragraph 13 speaks for itself, and therefore Reilly has no response to this allegation. To the extent that paragraph 13 contains any factual allegations, Reilly denies the same.

14. The statutory section quoted in paragraph 14 speaks for itself, and therefore Reilly has no response to this allegation. To the extent that paragraph 14 contains any factual allegations, Reilly denies the same.

15. The statutory section quoted in paragraph 15 speaks for itself, and therefore Reilly has no response to this allegation. To the extent that paragraph 15 contains any factual allegations, Reilly denies the same.

16. Reilly denies the allegations of paragraph 16.

17. Reilly denies the allegations of paragraph 17.

COUNT XI

NOVEMBER 1, 2000 AIR POLLUTION VIOLATIONS

1-8. Reilly repeats and realleges its answers to paragraphs 1 through 5 and 14 through 16 of Count I as its answers to paragraphs 1 through 8 of Count XI.

9-11. Reilly repeats and realleges its answers to paragraphs 6 through 8 of Count IV as its answers to paragraphs 9 through 11 of Count XI.

12. Reilly repeats and realleges its answer to paragraph 11 of Count X as its answer to paragraph 12 of Count XI.

13. Reilly denies the allegations of paragraph 13.

14. Reilly denies the allegations of paragraph 14.

COUNT XII

JULY 4, 2003 WATER POLLUTION HAZARD VIOLATIONS

1-4. Reilly repeats and realleges its answers to paragraphs 2 through 5 of Count I as its answers to paragraphs 1 through 4 of Count XII.

5-7. Reilly repeats and realleges its answers to paragraphs 6 through 8 of Count IV as its answers to paragraphs 5 through 7 of Count XII.

8-11. Reilly repeats and realleges its answers to paragraph 12 through 15 of Count X as its answers to paragraphs 8 through 11 of Count XII.

12. Reilly has insufficient knowledge to either admit or deny the allegation that “[t]his Count is brought by the People of the State of Illinois by Lisa Madigan, the Attorney General of the State of Illinois, on her own motion and at the request of the Illinois EPA,” and thus denies same. Reilly admits that “[t]he Illinois EPA requested that Reilly waive Section 31 requirements,” and that “[b]y letter dated September 12, 2003, Reilly agreed to waive Section 31 requirements.”

13. Reilly admits the allegations of paragraph 13.

14. Reilly admits the allegation of the first sentence of paragraph 14 that the release in question “occurred from a rail car that had been sitting dormant at [a] Koppers facility . . . since April 2001.” However, Reilly denies that the “Koppers facility” was located “in Henry, South Carolina,” and denies that it told Illinois EPA that the ““Koppers facility” was located “in Henry, South Carolina.” Rather, Reilly affirmatively

states that the "Koppers facility" is located in Woodward, Alabama, and further affirmatively states that it told Illinois EPA that the "Koppers facility" is located in Woodward, Alabama. In response to the second sentence of paragraph 14, Reilly admits that it "made the decision to remove the car from service," but denies that it made any "decision . . . to have [the railcar] cleaned at the Reilly Granite City facility" or elsewhere. In response to the third sentence of paragraph 14, Reilly admits that "[a]t some point, the decision was made to load the rail car with crude coal tar," but denies that this was before shipping the rail car anywhere "for cleaning." Again, Reilly denies that it made any "decision . . . to have [the railcar] cleaned at the Reilly Granite City facility" or elsewhere. In response to the fourth sentence of paragraph 14, Reilly denies that "[t]he rail car was sent from the Koppers facility in South Carolina to Sloss Industries in Birmingham, Alabama and then shipped to Granite City." Rather, Reilly affirmatively states that the rail car in question was used successfully to move emulsion-based tar (RT-12) to a customer; that the customer reported no problems with the rail car; and, therefore, that the railcar was loaded with tar at Sloss Industries in North Birmingham, Alabama, and then shipped to Reilly's facility in Granite City, Illinois. Reilly admits the last two sentences of paragraph 14. To the extent that paragraph 14 states any further factual allegations, Reilly denies the same.

15. Reilly does not have records as to all of the exact dates that Illinois EPA came to the Facility following the release at issue, and therefore has insufficient knowledge to either admit or deny the allegations of paragraph 15.

16. Reilly admits the allegations of paragraph 16.

17. Reilly does not have records regarding the exact status of the response to the release at issue on July 8, 2003, and therefore has insufficient knowledge to either admit or deny the allegations in paragraph 17.

18. Reilly does not have records regarding the exact status at the response to the release at issue on July 8, 2003, and therefore, has insufficient knowledge to either admit or deny the allegations in paragraph 18.

19. Reilly has insufficient knowledge to either admit or deny the allegation in paragraph 19 regarding what "the Illinois EPA beheld," and therefore denies the allegation. Further, Reilly does not have records regarding the exact status at the response to the release at issue on July 11, 2003, and therefore, has insufficient knowledge to either admit or deny the allegations in paragraph 19.

20. Reilly does not have records regarding the exact status at the response to the release at issue on July 21, 2003, and therefore, has insufficient knowledge to either admit or deny the allegations in paragraph 20.

21. Reilly does not have records regarding the exact status at the response to the release at issue on August 5, 2003, and therefore, has insufficient knowledge to either admit or deny the allegations in the first sentence of paragraph 21. Reilly admits the allegations of the second, third, fourth and fifth sentences at paragraph 21.

22. Reilly denies the allegations of paragraph 22.

23. Reilly denies the allegations of paragraph 23.

COUNT XIII

JULY 4, 2003 FACILITY MAINTENANCE VIOLATIONS

1-4. Reilly repeats and realleges its answers to paragraphs 2 through 5 of Count I as its answers to paragraphs 1 through 4 of Count XIII.

5-7. Reilly repeats and realleges its answers to paragraphs 6 through 8 of Count IV as its answers to paragraphs 5 through 7 of Count XIII.

8-9. Reilly repeats and realleges its answers to paragraphs 14 and 17 of Count V as its answers to paragraphs 8 through 9 of Count XIII.

10-19. Reilly repeats and realleges its answers to paragraphs 12 through 21 of Count XII as its answers to paragraphs 10 through 19 of Count XIII.

20. Reilly specifically denies that the release at issue constituted a release of "hazardous waste or hazardous waste constituents," and therefore denies the allegations of paragraph 20.

21. Reilly specifically denies that the release at issue constituted a release of "hazardous waste or hazardous waste constituents," and therefore denies the allegations of paragraph 20.

AFFIRMATIVE DEFENSE TO COUNTS XII AND XIII

For its affirmative defense to Counts XII and XIII, Reilly states as follows:

1. The release alleged in Count XII, which forms the basis for Counts XII and XIII, was caused by the failure of an internal valve inside a rail car.
2. Reilly does not own the rail car at issue.

3. The internal valve and the pressure relief valve on the rail car at issue were tested in 2000 and passed testing.

4. The internal valve controls the flow of material from the rail car through an outlet on the bottom of the rail car.

5. This valve is operated by a handle on the top of the rail car.

6. The rail car was used to ship material to another site immediately prior to being used to ship crude coal tar to Reilly's facility in Granite City, Illinois.

7. That site reported no difficulty with the use of the valve that subsequently failed at Reilly's facility.

8. Because the valve passed inspection in 2000, and operated properly when used immediately before the shipment to Reilly's facility, Reilly had no reason to suspect that the valve would fail at Reilly's facility.

9. Prior to the arrival of the rail car at Reilly's facility, the stem of the handle that operates the valve had come unattached from the valve and lodged under the valve.

10. Reilly determined this fact by an interior inspection of the rail car after the release; the valve is not visible from the exterior of the rail car.

11. Because the valve is not visible from the exterior of the rail car, Reilly could not have inspected the valve to determine that the handle stem had come unattached.

12. Further, because the handle stem had come unattached, the handle would not turn.

13. Because the handle stem had come unattached, Reilly could not have determined that the valve was not operating properly by trying to close the valve, because, again, the handle that operated the valve would not turn.

14. Thus, there was no means by which Reilly could have determined that the valve would fail prior to the failure occurring.

15. Thus, Reilly lacked the capability to control the source of the release, namely, the valve that failed.

16. Further, Reilly took all possible precautions to ensure that the valve was operating properly.

17. Thus, the Board should find that the failure of the valve did not constitute a violation of the Act or regulations by Reilly.

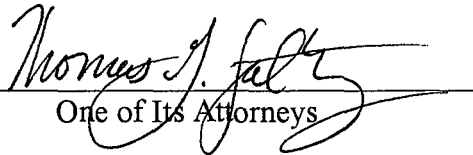
WHEREFORE, Respondent REILLY INDUSTRIES, INC., by its attorneys HODGE DWYER ZEMAN, prays that the Board find against Complainant, and for Reilly, on Paragraphs XII and XIII of Complainant's Complaint, and that the Board award REILLY INDUSTRIES, INC., all relief just and proper in the premises.

CONCLUSION

WHEREFORE, Respondent REILLY INDUSTRIES, INC., by its attorneys HODGE DWYER ZEMAN, prays that Complainant take nothing by way of its Complaint, and that the Board award REILLY INDUSTRIES, INC., all relief just and proper in the premises.

Respectfully submitted,

REILLY INDUSTRIES, INC.,
Respondent,

By: 
One of Its Attorneys

Dated: October 18, 2004

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