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**JUN 30 2005**

**STATE OF ILLINOIS**  
**Pollution Control Board**

**OFFICE OF THE ATTORNEY GENERAL**  
**STATE OF ILLINOIS**

**Lisa Madigan**  
ATTORNEY GENERAL

June 27, 2005

The Honorable Dorothy Gunn  
Illinois Pollution Control Board  
State of Illinois Center  
100 West Randolph  
Chicago, Illinois 60601

Re: ***People v. Reilly Industries, Inc.***  
**PCB No. 03-182**

Dear Clerk Gunn:

Enclosed for filing please find the original and ten copies of a NOTICE OF FILING, COMPLAINANT'S RESPONSE TO AFFIRMATIVE DEFENSE in regard to the above-captioned matter. Please file the original and return a file-stamped copy of the document to our office in the enclosed, self-addressed envelope.

Thank you for your cooperation and consideration.

Very truly yours,

  
Tom Davis, Chief  
Environmental Bureau  
500 South Second Street  
Springfield, Illinois 62706  
(217) 782-9031

TD/pp  
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED  
CLERK'S OFFICE

JUN 30 2005

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF )  
ILLINOIS, )  
 )  
Complainant, )  
 )  
vs. )  
 )  
REILLY INDUSTRIES, INC., )  
an Indiana corporation, )  
 )  
Respondent. )

PCB No. 03-182  
(Enforcement)

NOTICE OF FILING

To: Thomas G. Safley  
Hodge Dwyer Zeman  
3150 Roland Avenue  
P.O. Box 5776  
Springfield, IL 62705-5776

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, COMPLAINANT'S RESPONSE TO AFFIRMATIVE DEFENSE, a copy of which is attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,  
Attorney General of the  
State of Illinois

MATTHEW J. DUNN, Chief  
Environmental Enforcement/Asbestos  
Litigation Division

BY: \_\_\_\_\_  
THOMAS DAVIS, Chief  
Assistant Attorney General  
Environmental Bureau

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: June 27, 2005

**CERTIFICATE OF SERVICE**

I hereby certify that I did on June 27, 2005, send by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING, COMPLAINANT'S RESPONSE TO AFFIRMATIVE DEFENSE


To: Thomas G. Safley  
Hodge Dwyer Zeman  
3150 Roland Avenue  
P.O. Box 5776  
Springfield, IL 62705-5776

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

To: Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
State of Illinois Center  
Suite 11-500  
100 West Randolph  
Chicago, Illinois 60601

a copy was also sent to:

Carol Webb  
Hearing Officer  
Illinois Pollution Control Board  
1021 N. Grand Avenue East  
Springfield, IL 62794

  
\_\_\_\_\_  
THOMAS DAVIS, Chief  
Environmental Bureau  
Assistant Attorney General

**JUN 30 2005**

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
vs. )  
)  
REILLY INDUSTRIES, INC., )  
an Indiana corporation, )  
)  
Respondent. )

No. 03-182  
(Enforcement)

**COMPLAINANT'S RESPONSE TO AFFIRMATIVE DEFENSE**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, hereby responds to the purported affirmative defense pleaded by the Respondent pursuant to Section 103.204(d) of the Board's Procedural Rules, 35 Ill. Adm. Code 103.204(d). The Respondent's affirmative defense is to Counts XII and XIII which relates to a release of approximately 16,000 gallons of crude coal tar from a tank car on July 4, 2003. The allegations of paragraph 14 of Count XII, to which the Respondent admits, are as follows:

Reilly explained to the Illinois EPA that the release occurred from a rail car that had been sitting dormant at the Koppers facility in Woodward, Alabama, since April 2001. Reilly made the decision to remove the car from service. At some point, the decision was made to return the rail car to service. The rail car was subsequently loaded with crude coal tar at Sloss Industries in North Birmingham, Alabama, and shipped back to Reilly's Granite City facility. On July 4, 2003, a Reilly operator removed the bottom cap and the valve began to leak. The operator attempted to close the valve, at which point the valve completely failed.

In addition to these facts, the Respondent alleges the following, to which the Complainant responds:

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.

Answer: As set forth above, the Respondent admits that, on July 4, 2003, a Reilly operator removed the bottom cap and the valve began to leak; the operator attempted to close

the valve, at which point the valve completely failed. In this context, the Complainant admits that the failure of an internal valve inside the rail car contributed to the release.

2. Reilly does not own the rail car at issue.

Answer: The Complainant admits this allegation.

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

Answer: The Complainant has insufficient knowledge to either admit or deny this allegation.

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

Answer: The Complainant admits this allegation.

5. The valve is opened by a handle on the top of the rail car.

Answer: The Complainant admits this allegation.

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.

Answer: The Complainant has insufficient knowledge to either admit or deny this allegation.

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

Answer: The Complainant has insufficient knowledge to either admit or deny this allegation.

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.

Answer: The Complainant denies this allegation.

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.

Answer: The Complainant has insufficient knowledge to either admit or deny this allegation.

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.

Answer: The Complainant has insufficient knowledge to either admit or deny this allegation as it relates to the inspection. The Complainant admits that 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.

Answer: The Complainant has insufficient knowledge to either admit or deny this allegation.

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

Answer: The Complainant admits this allegation.

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.

Answer: The Complainant has insufficient knowledge to either admit or deny this allegation.

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

Answer: The Complainant has insufficient knowledge to either admit or deny this allegation.

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

Answer: The Complainant objects because this statement is a legal conclusion.

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

Answer: The Complainant denies this allegation.

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

Answer: The Complainant objects because this statement is a legal conclusion.

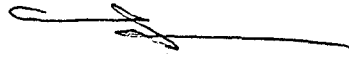
WHEREFORE, Complainant respectfully asks that the Board deny any affirmative defense.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN  
Attorney General  
State of Illinois

MATTHEW J. DUNN, Chief  
Environmental Enforcement Division

BY:   
THOMAS DAVIS, Chief  
Environmental Bureau  
Assistant Attorney General

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: June 24, 2005