

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

KENNETH E. MEDEMA, JR.,)	
)	
Complainant,)	
)	
v.)	PCB No. 05-220
)	(Enforcement – Noise)
TNT LOGISTICS NORTH AMERICA)	
INC.,)	
)	
Respondent.)	

NOTICE OF FILING

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

(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 **ENTRY OF APPEARANCE OF EDWARD W. DWYER, ENTRY OF APPEARANCE OF THOMAS G. SAFLEY, and RESPONDENT'S ANSWER AND AFFIRMATIVE DEFENSE TO COMPLAINANT'S COMPLAINT**, copies of which are herewith served upon you.

Respectfully submitted,

TNT LOGISTICS NORTH
AMERICA INC.,
Respondent,

By: /s/ Thomas G. Safley
One of Its Attorneys

Dated: August 22, 2005

Edward W. Dwyer
Thomas G. Safley
HODGE DWYER ZEMAN
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900

CERTIFICATE OF SERVICE

I, Thomas G. Safley, the undersigned, hereby certify that I have served the attached ENTRY OF APPEARANCE OF EDWARD W. DWYER, ENTRY OF APPEARANCE OF THOMAS G. SAFLEY, and RESPONDENT'S ANSWER AND AFFIRMATIVE DEFENSE TO COMPLAINANT'S COMPLAINT upon:

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

via electronic mail on August 22, 2005; and upon:

Bradley P. Halloran, Esq.
Hearing Officer
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

Mr. Kenneth E. Medema, Jr.
6603 Lakeview Lane
Monee, Illinois 60449

by depositing said documents in the United States Mail, postage prepaid, in Springfield, Illinois on August 22, 2005.

/s/ Thomas G. Safley
Thomas G. Safley

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

KENNETH E. MEDEMA, JR.,)	
)	
Complainant,)	
)	
v.)	PCB No. 05-220
)	(Enforcement – Noise)
TNT LOGISTICS NORTH AMERICA)	
INC.,)	
)	
Respondent.)	

ENTRY OF APPEARANCE OF EDWARD W. DWYER

NOW COMES Edward W. Dwyer, of the law firm of HODGE DWYER ZEMAN, and hereby enters his appearance on behalf of Respondent, TNT LOGISTICS NORTH AMERICA INC.

Respectfully submitted,

TNT LOGISTICS NORTH AMERICA
INC.,
Respondent,

By: /s/ Edward W. Dwyer
Edward W. Dwyer

Dated: August 22, 2005

Edward W. Dwyer
Thomas G. Safley
HODGE DWYER ZEMAN
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

KENNETH E. MEDEMA, JR.,)	
)	
Complainant,)	
)	
v.)	PCB No. 05-220
)	(Enforcement – Noise)
TNT LOGISTICS NORTH AMERICA)	
INC.,)	
)	
Respondent.)	

ENTRY OF APPEARANCE OF THOMAS G. SAFLEY

NOW COMES Thomas G. Safley, of the law firm of HODGE DWYER ZEMAN, and hereby enters his appearance on behalf of Respondent, TNT LOGISTICS NORTH AMERICA INC.

Respectfully submitted,

TNT LOGISTICS NORTH AMERICA
INC.,
Respondent,

By: /s/ Thomas G. Safley
Thomas G. Safley

Dated: August 22, 2005

Edward W. Dwyer
Thomas G. Safley
HODGE DWYER ZEMAN
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900

TNTL:002/Fil/EOA-TGS-Medema

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

KENNETH E. MEDEMA, JR.,)	
)	
Complainant,)	
)	
v.)	PCB No. 05-220
)	(Enforcement – Noise)
TNT LOGISTICS NORTH AMERICA)	
INC.,)	
)	
Respondent.)	

RESPONDENT’S ANSWER AND AFFIRMATIVE DEFENSE TO COMPLAINANT’S COMPLAINT

NOW COMES Respondent, TNT LOGISTICS NORTH AMERICA INC. (“TNT”), by its attorneys HODGE DWYER ZEMAN, and for its Answer and Affirmative Defense to Complainant’s Complaint, states as follows:

ANSWER

1. TNT has insufficient information to admit or deny the allegations contained in paragraph one of Complainant’s Complaint, and therefore denies the same.
2. TNT has insufficient information to admit or deny the allegations contained in paragraph two of Complainant’s Complaint, and therefore denies the same.
3. TNT admits that it operates a facility at the address and telephone number identified by Complainant in paragraph three of Complainant’s Complaint (“Facility”). To the extent that paragraph three of Complainant’s Complaint contains any further factual allegations, TNT denies the same.
4. In response to paragraph four of Complainant’s Complaint, TNT admits that its Facility conducts warehousing and distribution activities. To the extent that paragraph four of Complainant’s Complaint contains any further factual allegations, TNT denies the same.

5. Paragraph five of Complainant's Complaint states a legal conclusion that does not call for a response. To the extent that paragraph five of Complainant's Complaint contains any factual allegations, TNT denies the same. TNT further specifically denies that it has violated the numeric noise limitations referenced in paragraph five of Complainant's Complaint.

6. TNT denies that any alleged activities referenced in paragraph six of Complainant's Complaint constitute "pollution" or have resulted in the violation of any of the numeric noise limitations referenced in paragraph five of Complainant's Complaint. To the extent that paragraph six of Complainant's Complaint contains any further factual allegations, TNT denies the same.

7. TNT affirmatively states that it has no information regarding when, if at all, any alleged noise emissions from its Facility allegedly would have been emitted to Complainant's property. Thus, TNT has insufficient information to admit or deny the allegations contained in the first three sentences of paragraph seven of Complainant's Complaint, and therefore denies the same. The fourth sentence of paragraph seven of Complainant's Complaint does not contain a factual allegation, but contains an opinion that does not call for a response. To the extent that paragraph seven of Complainant's Complaint contains any further factual allegations, TNT denies the same.

8. TNT has insufficient information to admit or deny the allegations contained in paragraph eight of Complainant's Complaint, and therefore denies the same.

9. TNT denies that Complainant is entitled to the relief he requests in paragraph nine of Complainant's Complaint. To the extent that paragraph nine of Complainant's Complaint contains any factual allegations, TNT denies the same.

10. TNT has insufficient information to admit or deny any allegations contained in paragraph 10 of Complainant's Complaint, and therefore denies the same.

11. TNT has insufficient information to admit or deny any allegations contained in paragraph 11 of Complainant's Complaint, and therefore denies the same.

12. TNT has insufficient information to admit or deny any allegations contained in paragraph 12 of Complainant's Complaint, and therefore denies the same.

WHEREFORE, Respondent TNT LOGISTICS NORTH AMERICA INC., by its attorneys HODGE DWYER ZEMAN, prays that Complainant take nothing by way of his Complaint, and that the Illinois Pollution Control Board award TNT LOGISTICS NORTH AMERICA INC. all relief just and proper in the premises.

AFFIRMATIVE DEFENSE

For its affirmative defense to Complainant's Complaint, TNT states as follows:

1. TNT operates the Facility in order to warehouse and distribute tires.
2. Trucks deliver trailers of tires to the Facility.
3. TNT does not own or operate these trucks.
4. Trucks also transport trailers of tires from the Facility.
5. TNT does not own or operate these trucks.
6. Complainant in part appears to allege that noise from these trucks, which TNT does not own or operate, has, at Complainant's property, violated the numeric noise limitations cited by Complainant in paragraph five of his Complaint.
7. TNT has no evidence that this is the case.

8. However, if this is the case, such alleged violations relating to trucks which TNT does not own or operate do not constitute violations of the numeric noise limitations by TNT.

WHEREFORE, Respondent TNT LOGISTICS NORTH AMERICA INC., by its attorneys HODGE DWYER ZEMAN, prays that the Illinois Pollution Control Board find in favor of TNT LOGISTICS NORTH AMERICA INC. on this Affirmative Defense, that Complainant take nothing by way of his Complaint, and that the Illinois Pollution Control Board award TNT LOGISTICS NORTH AMERICA INC. all relief just and proper in the premises.

Respectfully submitted,

TNT LOGISTICS NORTH
AMERICA INC.,
Respondent,

By: /s/ Thomas G. Safley
One of Its Attorneys

Dated: August 22, 2005

Edward W. Dwyer
Thomas G. Safley
HODGE DWYER ZEMAN
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900

TNTL:002/Fil/Answer - Medema