

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ROBERT F. KASSELLA JR. and)	
KELLIE R. KASSELLA,)	
)	
Complainants,)	
)	
v.)	PCB No. 06-001
)	(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 COMPLAINANTS' 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 26, 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 COMPLAINANTS' 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 26, 2005; and upon:

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

Mr. Robert F. Kassela, Jr.
Ms. Kellie R. Kassela
6610 Lakeview Lane
Monee, Illinois 60449

by depositing said documents in the United States Mail, postage prepaid, in Springfield,

Illinois on August 26, 2005.

/s/ Thomas G. Safley
Thomas G. Safley

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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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 26, 2005

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

TNTL:002/Fil/EOA-EWD-Kassela

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ROBERT F. KASSELLA JR. and)	
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TNT LOGISTICS NORTH AMERICA)	
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)	
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 26, 2005

Thomas G. Safley
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3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
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TNTL:002/Fil/EOA-TGS-Kassela

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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RESPONDENT’S ANSWER AND AFFIRMATIVE DEFENSE TO COMPLAINANTS’ COMPLAINT

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

ANSWER

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

paragraph four of Complainants' Complaint contains any further factual allegations, TNT denies the same.

5. Paragraph five of Complainants' Complaint states a legal conclusion that does not call for a response. To the extent that paragraph five of Complainants' 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 Complainants' Complaint.

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

7. TNT denies the first and second sentences of paragraph seven of Complainants' Complaint. TNT further 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 Complainants' property. Thus, TNT has insufficient information to admit or deny the allegations contained in the third and fourth sentences of paragraph seven of Complainants' Complaint, and therefore denies the same. To the extent that paragraph seven of Complainants' 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 Complainants' Complaint, and therefore denies the same.

9. TNT denies that Complainants are entitled to the relief they request in paragraph nine of Complainants' Complaint. To the extent that paragraph nine of Complainants' 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 Complainants' Complaint, and therefore denies the same.

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

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

WHEREFORE, Respondent TNT LOGISTICS NORTH AMERICA INC., by its attorneys HODGE DWYER ZEMAN, prays that Complainants take nothing by way of their 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 Complainants' 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. Complainants in part appear to allege that noise from these trucks, which TNT does not own or operate, has, at Complainants' property, violated the numeric noise limitations cited by Complainants in paragraph five of their 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 Complainants take nothing by way of their 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
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TNTL:002/Fil/Answer - Kassela