

BEFORE THE ILLINOIS POLLUTION
CONTROL BOARD

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CLERK'S OFFICE

JAN 03 2007

STATE OF ILLINOIS
Pollution Control Board

PCB No. 2005-212

JOHN & LINDA MARACIC

Complainants

v/s

TNT LOGISTICS NORTH AMERICA, INC.

Respondent

NOTICE OF FILING

TO: Ms. Dorothy Gunn
Clerk of the Board
&
Bradley Halloran
Hearing Officer
Illinois Pollution Control Board
100 W. Randolph Street
Suite 11-500
Chicago, Illinois 60601

Hodge Dwyer Zeman
Edward Dwyer
Thoarns Safley
Ryan Mohr
3150 Roalnd Avenue
Springfiled, Illinois 62705

TNT Logistics North America, Inc.
25850 S. Ridgeland Avenue
Monee, Illinois 60449

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board with an **AMENDED COMPLAINT**, a copy of which is herewith served upon you.

Respectfully,

John & Linda Maracic
Complainants

State of Illinois
POLLUTION CONTROL BOARD
JAMES R. THOMPSON CENTER
100 W. RANDOLPH STREET, SUITE 11-500
CHICAGO, ILLINOIS 60601

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CLERK'S OFFICE

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STATE OF ILLINOIS
Pollution Control Board

AMENDED
COMPLAINT

BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD

John & Linda Maracic)
_____)
_____)
_____)
_____)

(Insert your name(s) on lines
above),)

Complainant(s),)

v.)

TNT Logistics)
_____)
_____)
_____)

(Insert name(s) of alleged polluter(s)
on lines above),)

Respondent(s).)

PCB No. 05-212
(For Board use)

Note: If you do not use this formal complaint form and instead draft and type your own, it must contain all of the information requested by this form. All items must be completed. If there is insufficient space to complete any item, you may attach additional sheets, specifying the number of the item you are completing. Once completed, you must file the original and nine copies of the formal complaint, notice to respondent, and certificate of service with the Clerk of the Board at the above address.

1. Your name, street address
John & Linda Maracic
county, state: 6512 Lakeway Drive
Monee, IL. 60449
Will County
Phone: 708-534-7587

2. Place where you can be contacted during normal business hours (if different from above):

Phone: 708-601-7587

3. Name and address of respondent (alleged polluter):
TNT Logistics
25850 S. Ridgeland Ave.
Monee, IL. 60449
Phone: 708-534-9125
(if known)

4. Describe the type of business or activity that you allege is causing or allowing pollution (e.g., manufacturing company, home repair shop) and give the address of the pollution source if different than the address above:
Warehouse Distribution Center

5. List specific sections of the Environmental Protection Act, Board regulations, Board order, or permit that you allege have been or are being violated:

Title VI: Noise

(415 ILCS 5/23) Sec. 23 (Source: P.A. 76-2429)

(415 ILCS 5/24) Sec. 24 (Source: P.A. 76-2429)

6. Describe the type of pollution that you allege (e.g., air, odor, noise, water, sewer back-ups, hazardous waste) and the location of the alleged pollution. Be as specific as you reasonably can in describing the alleged pollution:

Noise: Trucks entering & exiting facility, connecting and disconnecting of trailers, Air brakes disengaging on trucks, Air horns on trucks, trailers being dragged across length of lot. Trailers hitting loading docks, Revving of diesel engines, Idling of the engines from the trucks.

7. Describe the duration and frequency of the alleged pollution. Be as specific as you reasonably can about when you first noticed the alleged pollution, how frequently it occurs, and whether it is still continuing (include seasons of the year, dates, and times of day if known):

24 hours a day - 7 days a week - 365 days a year.
Continuous loading and unloading of trucks throughout the day and night to this day the noise is still continuing.

8. Describe any bad effects that you believe the alleged pollution has or has had on human health, on plant or animal life, on the environment, on the enjoyment of life or property, or on any lawful business or activity:

lack of sleep - being woken-up in the middle of the night many different times by the noise every night. child not being able to sleep in bedroom because the noise is too loud. Lack of enjoyment in her life. Very stressful for everyday functioning. Unable to enjoy outdoor living.

9. Describe the relief that you seek from the Board (e.g., an order that the respondent stop polluting, take pollution abatement measures, perform a cleanup, reimburse cleanup costs, change its operation, or pay a civil penalty (note that the Board cannot order the respondent to pay your attorney fees or any out-of-pocket expenses that you incur by pursuing an enforcement action)):

stop the noise so we can go back to the enjoyment of life before the facility came.

Unable to control noise - relocate facility or inclose loading docks or relocate loading docks to the north side of building and install a sound wall.

10. Identify any identical or substantially similar case you know of that is already pending before the Board or in another forum against this respondent for the same alleged pollution (note that you need not include any complaints made to the Illinois Environmental Protection Agency or any unit of local government):

Vincent & Jennifer Meri v. TNT Logistics PCB 2005-213

Wayne Haser v TNT Logistics PCB 2005-216

Ken Blouin v. TNT Logistics PCB 2005-217

11. State whether you are representing (a) yourself as an individual or (b) your unincorporated sole proprietorship. Also, state whether you are an attorney and, if so, whether you are licensed and registered to practice law in Illinois. (Under Illinois law, an association, citizens group, unit of local government, or corporation must be represented before the Board by an attorney. Also, an individual who is not an attorney cannot represent another individual or other individuals before the Board. However, an individual who is not an attorney is allowed to represent (a) himself or herself as an individual or (b) his or her unincorporated sole proprietorship, though the individual may prefer having attorney representation.):

self

12.

John A. Maracic
(Complainant's signature)

Linda L. Maracic

CERTIFICATION (optional but encouraged)

I, John A. Maracic Linda L. Maracic, on oath or affirmation, state that I have read the foregoing and that it is accurate to the best of my knowledge.

John A. Maracic
(Complainant's signature)

Linda L. Maracic

Subscribed to and sworn before me
this 29th day
of December, 2006

Carol L. Neri
Notary Public

My commission expires: 12-05-08



CERTIFICATE OF SERVICE

I, the undersigned, on oath or affirmation, state that on (month, day, year) _____, I served the attached formal complaint and notice on the respondent by: (check appropriate line)

X certified mail (attach copy of receipt if available, otherwise you must file receipt later with Clerk)

_____ registered mail (attach copy of receipt if available, otherwise you must file receipt later with Clerk)

_____ messenger service (attach copy of receipt if available, otherwise you must file receipt later with Clerk)

_____ personal service (attach affidavit if available, otherwise you must file affidavit later with Clerk)

at the address below:

RESPONDENT'S ADDRESS:

Name TNT Logistics

Street 25850 S. Ridgeland Ave

City, state, zip code Monee, IL 60449
(list each respondent's name and address if multiple respondents)

[Signature] Linda L. Manair
Complainant's signature

Street 6512 Lakeway Drive

City, state, zip code Monee, IL 60449

Subscribed to and sworn before me
this 29th day
of December, 2006

Carol L Neri
Notary Public



My commission expires: 12-05-08

NOTICE TO RESPONDENT

NOTE: THIS STATEMENT MUST BE INCLUDED IN THE SERVICE OF THE FORMAL COMPLAINT ON THE RESPONDENT

INFORMATION FOR RESPONDENT RECEIVING FORMAL COMPLAINT

Please take notice that today I filed with the Clerk of the Illinois Pollution Control Board (Board) a formal complaint, a copy of which is served on you along with this notice. You may be required to attend a hearing on a date set by the Board.

Information about the formal complaint process before the Board is found in the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.*) and the Board's procedural rules (35 Ill. Adm. Code 101 and 103). These can be accessed at the Board's Web site (www.ipcb.state.il.us). The following is a summary of some of the most important points in the Act and the Board's procedural rules. It is provided for general informational purposes only and does not constitute legal advice or substitute for the provisions of any statute, rule, or regulation:

Board Accepting Formal Complaint for Hearing; Motions

The Board will not accept this formal complaint for hearing if the Board finds that it is either "duplicative" or "frivolous" within the meaning of Section 31(d) of the Act (415 ILCS 5/31(d)) and Section 101.202 of the Board's procedural rules (35 Ill. Adm. Code 101.202). "Duplicative" means that an identical or substantially similar case is already pending before the Board or in court. *See* 35 Ill. Adm. Code 103.212(a) and item 10 of the formal complaint.

"Frivolous" means that the formal complaint seeks relief that the Board does not have the authority to grant, or fails to state a cause of action upon which the Board can grant relief. For example, the Board has the authority to order a respondent to stop polluting and pay a civil penalty, to implement pollution abatement measures, or to perform a cleanup or reimburse cleanup costs. The Board does not have the authority, however, to award attorney fees to a citizen complainant. *See* 35 Ill. Adm. Code 103.212(a) and items 5 and 9 of the formal complaint.

If you believe that this formal complaint is duplicative or frivolous, you may file a motion with the Board, within 30 days after the date you were served with the complaint, requesting that the Board not accept the complaint for hearing. The motion must state the facts supporting your belief that the complaint is duplicative or frivolous. Memoranda, affidavits, and any other relevant documents may accompany the motion. If you need more time than 30 days to file a motion alleging that the complaint is duplicative or frivolous, you must file a motion for an extension of time within 30 days after service of the complaint. A motion for an extension of time must state why you need more time and the amount of additional time you need. Timely filing a motion alleging that the complaint is duplicative

or frivolous will stay the 60-day period for filing an answer to the complaint. *See* 35 Ill. Adm. Code 103.204, 103.212(b).

All motions filed with the Board's Clerk must include an original, nine copies, and proof of service on the other parties. Service may be made in person, by U.S. mail, or by messenger service. Mail service is presumed complete four days after mailing. *See* 35 Ill. Adm. Code 101.300(c), 101.302, 101.304.

If you do not respond to the Board within 30 days after the date on which the complaint was served on you, the Board may find that the complaint is not duplicative or frivolous and accept the case for hearing. The Board will then assign a hearing officer who will contact you to schedule times for telephone status conferences and for hearing. *See* 35 Ill. Adm. Code 103.212(a).

Answer to Complaint

You have the right to file an answer to this formal complaint within 60 days after you receive the complaint. If you timely file a motion alleging that the complaint is duplicative or frivolous, or a motion to strike, dismiss, or challenge the sufficiency of the complaint, then you may file an answer within 60 days after the Board rules on your motion. *See* 35 Ill. Adm. Code 101.506, 103.204(d), (e), 103.212(b).

The Board's procedural rules require the complainant to tell you as respondent that:

Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney. 35 Ill. Adm. Code 103.204(f).

Necessity of an Attorney

Under Illinois law, an association, citizens group, unit of local government, or corporation must be represented before the Board by an attorney. In addition, an individual who is not an attorney cannot represent another individual or other individuals before the Board. However, even if an individual is not an attorney, he or she is allowed to represent (1) himself or herself as an individual or (2) his or her unincorporated sole proprietorship. *See* 35 Ill. Adm. Code 101.400(a). Such an individual may nevertheless wish to have an attorney prepare an answer and any

Costs

In defending against this formal complaint, you are responsible for your attorney fees, duplicating charges, travel expenses, witness fees, and any other costs that you or your

attorney may incur. The Board requires no filing fee to file your answer or any other document with the Board. The Board will pay any hearing costs (*e.g.*, hearing room rental, court reporting fees, hearing officer expenses).

If you have any questions, please contact the Clerk's Office at (312) 814-3629.

- (4) if the waste does not undergo testing, an explanation as to why no testing is needed;
- (5) a description of the process generating the waste; and
- (6) relevant Material Data Safety Sheets.

(c) Certification made pursuant to this Section shall be effective from the date signed until there is a change in the generator, in the raw materials used, or in the process generating the waste.

(d) Certification made pursuant to this Section, with the requisite attachments, shall be maintained by the certifying generator while effective and for at least 3 years following a change in the generator, a change in the raw materials used, or a change in or termination of the process generating the waste. The generator shall provide a copy of the certification, upon request by the Agency, the waste hauler, or the operator of the facility receiving the waste for storage, treatment, or disposal, to the party requesting the copy. If the Agency believes that the waste that is the subject of the certification has been inaccurately certified to, the Agency may require the generator to analytically test the waste for the constituent believed to be present and provide the Agency with a copy of the analytic results.

(e) A person who knowingly and falsely certifies that a waste is not special waste is subject to the penalties set forth in subdivision (6) of subsection (h) of Section 44 of this Act.

(f) To the extent that a term or condition of an existing permit requires the permittee to manage as special waste a material that is made a non-special waste under Public Act 90-502, that term or condition is hereby superseded, and the permittee may manage that material as a non-special waste, even if the material is identified in the permit as part of a particular waste stream rather than identified specifically as a special waste.

(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/22.49)

Sec. 22.49. Animal cremation. Unless subject to the requirements of Title XV of this Act as potentially infectious medical waste, a deceased companion animal, as defined in the Companion Animal Cremation Act, that is delivered to a provider of companion animal cremation services subject to the Companion Animal Cremation Act is not waste for the purposes of this Act. Providing companion animal cremation services at a location does not make that location a waste management facility for the purposes of this Act.

For the purposes of this Section, "companion animal" does not include livestock.

(Source: P.A. 93-121, eff. 1-1-04.)

TITLE VI: NOISE

(415 ILCS 5/23)

Sec. 23. The General Assembly finds that excessive noise endangers physical and emotional health and well-being, interferes with legitimate business and recreational activities, increases construction costs, depresses property values, offends the senses, creates public nuisances, and in other respects reduces the quality of our environment.

It is the purpose of this Title to prevent noise which creates a public nuisance.

(Source: P.A. 76-2429.)

(415 ILCS 5/24)

Sec. 24. No person shall emit beyond the boundaries of his property any noise that unreasonably interferes with the enjoyment of life or with any lawful business or activity, so as to violate any regulation or standard adopted by the Board under this Act.

(Source: P.A. 76-2429.)

(415 ILCS 5/25)

Sec. 25. The Board, pursuant to the procedures prescribed in Title VII of this Act, may adopt regulations prescribing limitations on noise emissions beyond the boundaries of the property of any person and prescribing requirements and standards for equipment and procedures for monitoring noise and the collection, reporting and retention of data resulting from such monitoring.

The Board shall, by regulations under this Section, categorize the types and sources of noise emissions that unreasonably interfere with the enjoyment of life, or with any lawful business, or activity, and shall prescribe for each such category the maximum permissible limits on such noise emissions. The Board shall secure the co-operation of the Department in determining the categories of noise emission and the technological and economic feasibility of such noise level limits.

In establishing such limits, the Board, in addition to considering those factors set forth in Section 27 of this Act, shall consider the adverse ecological effects on and interference with the enjoyment of natural, scenic, wilderness or other outdoor recreational areas, parks, and forests occasioned by noise