

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, by LISA )  
MADIGAN, Attorney General of the State of Illinois,) )  
Complainant, ) )  
v. ) PCB No. 16-61  
AMSTED RAIL COMPANY, INC., )  
A Delaware Corporation. ) )  
Respondent. ) )

NOTICE OF FILING

TO: Please see attached Service List

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board by electronic filing COMPLAINANT'S REPLY TO AMSTED RAIL COMPANY, INC.'S AFFIRMATIVE DEFENSES, a copy of which is attached and hereby served upon you.

Respectfully submitted,

LISA MADIGAN  
Attorney General  
State of Illinois

  
\_\_\_\_\_  
Jamie D. Getz

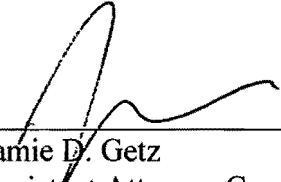
Dated: May 27, 2016

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THIS FILING IS SUBMITTED ON RECYCLED PAPER

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served via electronic mail on the date of May 27, 2016 the attached NOTICE OF FILING and COMPLAINANT'S REPLY TO AMSTED RAIL COMPANY, INC.'S AFFIRMATIVE DEFENSES to the addresses listed on the attached Service List.



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Date: May 27, 2016

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**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS,	)	
by LISA MADIGAN, Attorney	)	
General of the State of Illinois,	)	
	)	
Complainant,	)	
	)	
v.	)	No. 16-61
	)	(Enforcement – Air)
AMSTED RAIL COMPANY, INC.,	)	
a Delaware corporation,	)	
	)	
Respondent.	)	

**COMPLAINANT’S REPLY TO AMSTED RAIL COMPANY, INC.’S AFFIRMATIVE DEFENSES**

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois (“Complainant”), and, answering Respondent AMSTED RETAIL COMPANY, INC.’S (“Respondent”) affirmative defenses, states as follows:

**First Affirmative Defense**  
**Illinois Statute of Limitations**  
**(Counts VII, VIII, X, XI, and XII)**

1. This complaint was filed with the Board on November 16, 2015.

**Answer: Complainant admits this allegation.**

2. The Illinois Environmental Protection Act (Act) does not contain a statute of limitations on enforcement actions brought pursuant to the Act. Likewise, the Board’s procedural rules do not contain a statute of limitations on enforcement actions.

**Answer: This allegation is a legal conclusion for which no response is required.**

**Nonetheless, Complainant concurs that the Act and the Board’s procedural rules do not contain a statute of limitations on enforcement actions.**

3. However, the Illinois Code of Civil Procedure establishes a five-year statute of limitations for “all civil actions not otherwise provided for.” 735 ILCS 5/13-205.

**Answer: This allegation is a legal conclusion for which no response is required. Further, the Board’s procedural rules speak for themselves.**

4. The Board’s procedural rules specifically provide that “the Board may look to the Code of Civil Procedure...where the Board’s procedural rules are silent.” 35 Ill. Adm. Code 101.100(b).

**Answer: This allegation is a legal conclusion for which no response is required.**

5. The violations alleged in Counts VII, VIII, X, XI, and XII are not brought on behalf of the public interest. All of the violations are past violations, long since corrected, and mostly paperwork violations.

**Answer: Complainant denies that “Counts VII, VIII, X, XI and XII are not brought on behalf of the public interest”. Complainant denies that all of the violations are “past violations, long since corrected” to the extent that this statement alleges any facts not already pleaded in the Complaint. Complainant denies that all of the violations are “mostly paperwork violations.”**

6. Thus, the five-year statute of limitations (735 ILCS 5/13-205) is applicable to matters alleged in this complaint.

**Answer: This allegation is a legal conclusion for which no response is required.**

7. All alleged violations occurring prior to November 16, 2010 are barred by the Illinois five-year statute of limitations.

**Answer: This allegation is a legal conclusion for which no response is required.**

8. Counts VII and XI allege some violations which allegedly occurred in 2008, and others

which allegedly occurred in 2012. All of the violations alleged in Counts VII and XI which occurred before November 16, 2010 are barred by the Illinois statute of limitations.

**Answer: In reply to the first sentence in paragraph 8 of Respondent's First Affirmative Defense, the Complaint speaks for itself. In reply to the second sentence, these allegations are legal conclusions for which no responses are required.**

9. The violations alleged in Counts VIII are based on permit 08060024. That permit was issued on August 7, 2008. Count VIII does not specify when the alleged violations occurred. To the extent the violations alleged in Count VIII occurred prior to November 16, 2010, such violations are barred by the Illinois statute of limitations.

**Answer: Complainant admits that Construction Permit 08060024 was issued on August 7, 2008. The remainder of the allegations consists of legal conclusions for which no response is required.**

10. Count X alleges violations which purportedly occurred from December 2007 "through the date of filing" of the complaint. All alleged violations which occurred prior to November 16, 2010 are barred by the Illinois statute of limitations.

**Answer: In reply to the first sentence of paragraph 10 of Respondent's First Affirmative Defense, the Complaint speaks for itself. In response to the second sentence, these allegations are legal conclusions for which no responses are required.**

11. Count XIII alleges violations which were, by the plaintiff's own pleading, resolved by September 10, 2010. Therefore, the violations alleged in Count XII are barred by the Illinois statute of limitations.

**Answer: These allegations are legal conclusions for which no responses are required.**

**Second Affirmative Defense**  
**Federal Statute of Limitations**  
**(Counts XI and XII)**

1. This complaint was filed on November 16, 2015.

**Answer: Complainant admits this allegation.**

2. Counts XI and XII allege violations of respondent's Clean Air Act Permit Program (CAAPP) permit.

**Answer: Complainant admits this allegation.**

3. CAAPP is the permit program established by Illinois to comply with the permit requirements of Title V of the federal Clean Air Act. 42 U.S.C. § 7661a *et seq.* The Illinois General Assembly defined "CAAPP" as "the Clean Air Act Permit Program, developed pursuant to Title V of the Clean Air Act." 415 ILCS 5/39.5(1).

**Answer: These allegations are legal conclusions for which no responses are required. Further, in reply to the second sentence of Respondent's Second Affirmative Defense, the Act speaks for itself.**

4. Although the United States Environmental Protection Agency (USEPA) has approved the Illinois CAAPP program as satisfying the requirements of the Clean Air Act, CAAPP remains a federal Clean Air Act program.

**Answer: Complainant admits that the Illinois CAAPP program satisfies the requirements of the Clean Air Act. Complainant lacks sufficient information to admit or deny the allegation that "CAAPP remains a federal Clean Air Act program" because the term "federal Clean Air Act program" is not defined.**

5. Clean Air Act violations are governed by a five-year statute of limitations. 28 U.S.C. § 2462.

**Answer: This allegation is a legal conclusion for which no response is required.**

**Further, 28 U.S.C. § 2462 speaks for itself.**

6. Because Counts XI and XII allege violations of the Clean Air Act CAAPP, those alleged violations are subject to the federal five-year statute of limitations.

**Answer: This allegation is a legal conclusion for which no response is required.**

**Complainant further states that Counts XI and XII seek relief for violations of Section 39.5(6)(a) of the Act, 415 ILCS 5.39.5(6)(a).**

7. Count XI alleges some violations which allegedly occurred in 2008, and others which allegedly occurred in 2012. All of the violations alleged in Count XI which occurred before November 16, 2010 are barred by the five-year federal statute of limitations.

**Answer: These allegations are legal conclusions for which no responses are required.**

8. Count XII alleges violations which were, by the plaintiff's own pleading, resolved by September 10, 2010. Therefore, the violations alleged in Count XII are barred by the five-year federal statute of limitations.

**Answer: These allegations are legal conclusions for which no responses are required.**

**Third Affirmative Defense**  
**Illinois Statute of Limitations**  
**(Counts I through VI)**

1. The complaint was filed with the Board on November 16, 2015.

**Answer: Complainant admits this allegation.**

2. The Act does not contain a statute of limitations on enforcement actions brought pursuant to the Act. Likewise, the Board's procedural rules do not contain a statute of limitations on



enforcement actions.

**Answer: This allegation is a legal conclusion for which no response is required. Nonetheless, Complainant concurs that the Act and the Board's procedural rules do not contain a statute of limitations on enforcement actions.**

3. However, the Illinois Code of Civil Procedure establishes a five-year statute of limitations for "all civil actions not otherwise provided for." 735 ILCS 5/13-205.

**Answer: This allegation is a legal conclusion for which no response is required.**

4. The Board's procedural rules specifically provide that "the Board may look to the Code of Civil Procedure...where the Board's procedural rules are silent." 35 Ill. Adm. Code 101.100(b).

**Answer: This allegation is a legal conclusion for which no response is required. Further, the Board's procedural rules speak for themselves.**

5. The violations alleged in Counts I, II, III, IV, V, and VI are not brought on behalf of the public interest. All of the violations are past violations, long since corrected.

**Answer: Complainant denies that "Counts I, II, III, IV, V, and VI are not brought on behalf of the public interest". Complainant denies that all of the violations are "past violations, long since corrected" to the extent that this statement alleges any facts not already pleaded in the Complaint.**

6. Thus, the five-year statute of limitations (735 ILCS 5/13-205) is applicable to matters alleged in this complaint.


**Answer: This allegation is a legal conclusion for which no response is required.**

7. All alleged violations occurring prior to November 16, 2010 are barred by the Illinois five-year statute of limitations. Further, all alleged violations of which Complainant had

knowledge prior to November 16, 2010 are barred by the Illinois five-year statute of limitations.

**Answer:      These allegations are legal conclusions for which no responses are required.**

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jamie Getz', written over a horizontal line.

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