

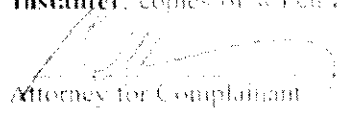
BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ROBERT E. KASSELLA, JR. and	)	
KATHLEEN R. KASSELLA,	)	
Complainant,	)	
	)	
v.	)	PCB No. 06-901
	)	(Enforcement Notice)
INT LOGISTICS	)	
NORTH AMERICA, INC.,	)	
	)	
Respondent,	)	

NOTICE OF FILING

TO:		
Ms. Dorothy M. Curran	Bradley P. Halloran, Esq.	Edward W. Sawyer
Clerk of the Board	Hearing Officer	Thomas G. Saffley
Illinois Pollution Control	Illinois Pollution Control	1100 N. DOWNEY
Board	Board	CHICAGO, IL 60601
100 West Randolph St.	100 West Randolph St.	1501 Roland Ave.
Suite 11-500	Suite 11-500	P.O. Box 5776
Chicago, IL 60601	Chicago, IL 60601	Springfield, IL 62758

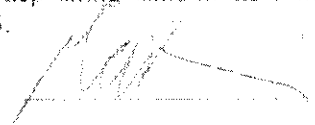
PLEASE TAKE NOTICE that on December 27, 2005, NOLAN LAW OFFICE will file with the Office of the Clerk of the Illinois Pollution Control Board the attached **Reply to Response to Motion for Leave to Amend Complaint Instantly**, copies of which are attached hereto and hereby served upon you.


Attorney for Complainant

Timothy M. Nolan, Mary A. Sullivan
NOLAN LAW OFFICE
Attorneys for Defendants
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PROOF OF SERVICE

The undersigned attorney certifies that this notice is served by mailing a copy to each person to whom it is directed, by placing a copy of said document in an envelope properly addressed to each person above with postage prepaid and depositing same in the U.S. Mail at 53 W. Jackson Blvd., Chicago, Illinois on December 27, 2005.



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,	)	

COMPLAINANTS' REPLY TO RESPONDENT'S RESPONSE TO
MOTION FOR LEAVE TO AMEND COMPLAINT, INSTANTER

NOW COME the Complainants, ROBERT F. KASSELLA, JR. and KELLIE R. KASSELLA, by and through their attorneys, NOLAN LAW OFFICE, and in reply to the Response of TNT LOGISTICS NORTH AMERICA, INC. (TNT) to Complainants' Motion for Leave to Amend Complaint *Instanter*, state as follows:

Respondent TNT erroneously relies upon 35 Ill. Admin. Code 103.206 in its Response to Complainants' Motion, which provision is entitled and applicable to "Adding Parties", and which is neither intention of Complainants nor has it been pled or prayed for herein.

Respondents misapply Section 103.206 by failing to read it under the context of its title and contents incorporated thereunder. Complainants are seeking leave to amend their complaint to include an additional violation not an additional party. Section 103.206 states in its entirety:

Section 103.206 Adding Parties

- a) The Board, on its own motion or the motion of a respondent, may order a person to be added as a respondent if a complete determination of a controversy cannot be had without the presence of the person who is not already a party to the proceeding.
- b) If the Board orders a person to be added as a respondent pursuant to subsection (a) of this Section, the Board will grant the complainant leave to file an amended complaint that sets forth a claim against the added respondent. The amended complaint must meet the requirements of Section 103.204 of this Subpart.
- c) Misjoinder and nonjoinder of parties with respect to enforcement proceedings are governed by 35 Ill. Admin. Code 103.403(b).
- d) If a party wishes to file a counter-complaint, cross-complaint, or third-party complaint, the party must move the Board for leave to file the pleading. If a party wishes to file an amendment to a complaint, counter-complaint, cross-complaint, or third-party complaint that sets forth a new or modified claim *against another person*, the party who wishes to file the pleading must move the Board for leave to file the pleading.
- e) The pleading sought to be filed pursuant to subsection (d) of this Section must:
 - 1) Set forth a claim that arises out of the occurrence or occurrences that are the subject of the proceeding; and
 - 2) Meet the requirements of Section 103.204 of this Subpart

35 Ill. Admin. Code 103.206 (emphasis added).

Again, as Complainants do not seek leave to add another person or party, Section 103.206 in its entirety does not apply, including the requirements of Section 103.204 as set forth in subparagraph e).

Accordingly, Complainants restate and reallege the allegations set forth in their Formal Complaint and seek leave amend said Complaint to incorporate in Paragraph 5

and all claims relevant under the allegations of the *complaints*, 35 Ill. Adm. Code 600.902 and for any other matter deemed just in the premises.

Furthermore, as Complainers' Motion is not dispositive, and does not seek to add parties, under 35 Ill. Adm. Code 600.902 and 35 Ill. Adm. Code 600.903, this Motion is properly directed to the Hearing Officer.

WHEREFORE Complainers, ROBERT F. KASSELLA, JR. and KATHLEEN KASSELLA, pray for entry of an Order, granting leave to amend their Complaint *as above*, or in the alternative to set a date certain for hearing on this Motion.

Respectfully submitted,

NOLAN LAW OFFICE



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