



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

September 11, 2006

RECEIVED
CLERK'S OFFICE

SEP 12 2006

STATE OF ILLINOIS
Pollution Control Board

PCB 07-16

The Honorable Dorothy Gunn
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, Illinois 60601

Re: ***People v. CSX Transportation, Inc.***

Dear Clerk Gunn:

Enclosed for filing please find the original and ten copies of a Notice of Filing, Entry of Appearance and Complaint in regard to the above-captioned matter. Please file the originals and return file-stamped copies to me in the enclosed, self-addressed envelope.

Thank you for your cooperation and consideration.

Very truly yours,

Kristen Laughridge Gale
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

KLG/pp
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

SEP 12 2006

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF)
 ILLINOIS,)
)
 Complainant,)
)
 vs.)
)
 CSX TRANSPORTATION, INC., a)
 Virginia corporation,)
)
 Respondent.)

PCB No. 07-16
(Enforcement)

NOTICE OF FILING

To: CSX Transportation, Inc.
a Virginia corporation
c/o CT Corporation System, R.A.
208 S. LaSalle St., Ste 814
Chicago, IL 60604

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a COMPLAINT, a copy of which is attached hereto and herewith served upon you. Failure to file an answer to this Complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in this 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.

FURTHER, please take notice that financing may be available, through the Illinois Environmental Facilities Financing Act, 20 ILCS 3515/1 (2004), to correct the pollution alleged in the Complaint filed in this case.

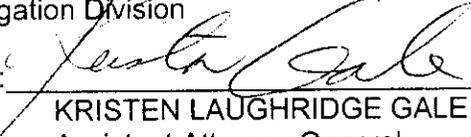
Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY:


KRISTEN LAUGHRIDGE GALE
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: September 11, 2006

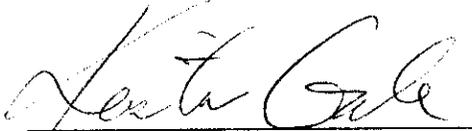
CERTIFICATE OF SERVICE

I hereby certify that I did on September 11, 2006, send by certified mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING, ENTRY OF APPEARANCE and COMPLAINT:

To: CSX Transportation, Inc.
a Virginia corporation
c/o CT Corporation System, R.A.
208 S. LaSalle St., Ste 814
Chicago, IL 60604

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

To: Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601



Kristen Laughridge Gale
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

SEP 12 2006

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF)
 ILLINOIS,)
)
 Complainant,)
)
 vs.)
)
 CSX TRANSPORTATION, INC., a)
 Virginia corporation,)
)
 Respondent.)

PCB No. 07-16
(Enforcement)

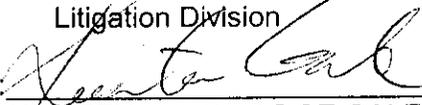
ENTRY OF APPEARANCE

On behalf of the Complainant, PEOPLE OF THE STATE OF ILLINOIS, KRISTEN LAUGHRIDGE GALE, Assistant Attorney General of the State of Illinois, hereby enters her appearance as attorney of record.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
LISA MADIGAN
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY 
 KRISTEN LAUGHRIDGE GALE
 Environmental Bureau
 Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: September 11, 2006

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

SEP 12 2006

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
vs.)
)
CSX TRANSPORTATION, INC., a)
Virginia corporation,)
)
Respondent.)

No. PCB 07-16
(Enforcement)

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

The PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, complain of the Respondent, CSX TRANSPORTATION, INC., as follows:

COUNT I

WATER POLLUTION

1. This Complaint is brought by the Attorney General on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2004).

2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2004), and charged, *inter alia*, with the duty of enforcing the Act in proceedings before the Illinois Pollution Control Board ("Board").

3. The Respondent, CSX Transportation, Inc. ("CSX") is a Virginia corporation licensed to do business in Illinois. It's registered agent is CT Corporation System located at 208 S. LaSalle St., Suite 814, Chicago, Illinois, 60604.

4. On July 9, 2004, IEMA incident #20040651 was reported stating that 400 to 500 gallons of diesel fuel was released at the CSX Rose Lake Yard located at 3900 Roselake Road, East St. Louis, St. Clair County, Illinois ("Yard").

5. On September 29, 2004, Hulcher Services, Inc. submitted to CSX a Proposal to Delineate and Remediate Diesel Impacted Soils, Ballast at the CSX Rose Lake Yard ("Proposal").

6. The Proposal stated that the release was over a switch at the Yard ("release area"). Hulcher proposed to excavate the release area along each side of the spur, flush the excavated area with d-limoline and water, and take soil samples for confirmation purposes.

7. On October 11, 2004, Illinois EPA sent a letter to CSX requesting that the release area be enrolled in the Illinois EPA Site Remediation Program.

8. CSX did not respond to the Illinois EPA's October 11, 2004 letter.

9. On December 16, 2004, Hulcher Services, Inc. faxed to the Illinois EPA analytical data for seven soil samples taken at the release area. The samples were analyzed for benzene, toluene, ethylbenzene, and xylene ("BETX") and poly nuclear aromatics ("PNAs").

10. The sample results showed exceedences of limits in Tier I Residential Soil Remediation Objectives under Table B of Appendix B of Section 742 of the Board's Tiered Approach to Corrective Actions Objectives ("TACO") Regulations, 35 Ill. Adm. Code 742, Appen. B, Table B, and of the Background Carcinogenic Polycyclic Aromatic Hydrocarbons ("PAH") 95th Percentile Concentrations.

Soil Sample No.	Analytical Results	Background for St. Clair County
#1	No Exceedences	
#2	No Exceedences	
#3	No Exceedences	

Soil Sample No.	Analytical Results		Background for St. Clair County
#4	Benzo(a)pyrene	3.2 mg/kg	2.1 mg/kg
	Benzo(b)fluoranthene	3.3 mg/kg	2.0 mg/kg
	Indeno(1,2,3-cd)pyrene	2.0 mg/kg	1.6 mg/kg
#5	No Exceedences		
#6	No Exceedences		
#7	Benzo(b)fluoranthene	2.1 mg/kg	2.0 mg/kg

11. CSX did not provide any additional information to the Illinois EPA regarding the excavation or sampling including a map or description of the remedial excavation, the locations of the soil samples, the amount of soil removed, or where the soil was disposed.

12. On January 3, 2005, Illinois EPA sent Violation Notice, L-2005-01001, to CSX by certified mail and signed for receipt on January 5, 2005.

13. The Violation Notice stated that CSX had not provided sufficient information to confirm that the cleanup of all residual material was completed.

14. CSX did not respond to the Illinois EPA to the Violation Notice.

15. On June 28, 2005, Illinois EPA sent a Notice of Intent to Pursue Legal Action ("NIPLA") to CSX for Violation Notice L-2005-01001 by certified mail and signed for receipt on June 30, 2005

16. CSX did not respond to the Illinois EPA to the NIPLA.

17. Residual contamination of soil and/or subsurface strata may be a continuing source of further releases to the waters of the State, including groundwater.

18. Section 12(a) of the Act, 415 ILCS 5/12(a) (2004), provides that:

No person shall:

- (a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources,

or so as to violate regulations or standards adopted by the Pollution Control Board under this Act;

19. Section 3.550 of the Act, 415 ILCS 5/3.550 (2004), provides that:

“WATERS” means all accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State.

20. Section 3.545 of the Act, 415 ILCS 5/3.545 (2004), provides that:

“WATER POLLUTION” is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or the livestock, wild animals, birds, fish, or other aquatic life.

21. From at least June 9, 2004, on dates better known to the Respondent, caused or allowed a release of diesel fuel at the Yard.

22. By causing or allowing the diesel fuel release from the Yard, the Respondent has threatened, caused or allowed water pollution of the groundwater, potentially rendering such waters harmful.

23. By doing so, Respondent has violated and will continue to violate Section 12(a) of the Act, 415 ILCS 5/12(a) (2004).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the People of the State of Illinois, respectfully requests that the Board enter an Order against the Respondent:

A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;

B. Finding that Respondent has violated the Act as alleged herein;

C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;

D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2004), impose a civil penalty of not more than the statutory maximum;

E. Granting such other relief as the Board may deem appropriate.

COUNT II
WATER POLLUTION HAZARD

1-21. The Complainant realleges and incorporates by reference herein paragraphs 1 through 21 of Count I as if fully set forth herein as paragraphs 1 through 21 of this Count II.

22. Section 12(d) of the Act, 415 ILCS 5/12(d) (2004), provides as follows:

No person shall:

d. Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard;

23. By releasing diesel fuel at the Yard, the Respondent has created a water pollution hazard.

24. By doing so, Respondent has violated and will continue to violate Section 12(d) of the Act, 415 ILCS 5/12(d) (2004).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the People of the State of Illinois, respectfully requests that the Board enter an Order against the Respondent:

A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;

B. Finding that Respondent has violated the Act as alleged herein;

C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;

D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2004), impose a civil penalty of not more than the statutory maximum;

E. Granting such other relief as the Board may deem appropriate.

COUNT III
OPEN DUMPING

1-16. The Complainant realleges and incorporates by reference herein paragraphs 1 through 16 of Count I as if fully set forth herein as paragraphs 1 through 16 of this Count III.

17. Section 3.535 of the Act, 415 ILCS 5/3.535 (2004), provides as follows:

"WASTE" means any garbage . . . or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities,

* * *

18. Section 3.305 of the Act, 415 ILCS 5/3.305 (2004), provides as follows:

"Open dumping" means the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill.

19. Section 21 of the Act, 415 ILCS 5/21 (2004), provides, in pertinent part, as follows:

No person shall:

a. Cause or allow the open dumping of any waste.

* * *

20. By causing or allowing the release of diesel fuel from at the Yard and leaving the contaminants in the soil, Respondent has open dumped at the Yard.

21. By doing so, Respondent has violated and will continue to violate Section 21(a) of the Act, 415 ILCS 5/21(a) (2004).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the People of the State of Illinois, respectfully requests that the Board enter an Order against the Respondent:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated the Act as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2004), impose a civil penalty of not more than the statutory maximum;
- F. Granting such other relief as the Board may deem appropriate.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN,
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: _____

THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

KRISTEN LAUGHRIDGE GALE
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: 9/11/06