

BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD

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NOV 15 2006

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 07-16
) (Enforcement)
CSX TRANSPORTATION, INC.,)
a Virginia corporation,)
)
Respondent.)

NOTICE OF FILING

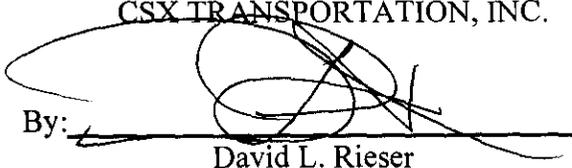
To: Kristen Laughridge Gale
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, IL 62706

Carol Webb, Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Post Office Box 19274
Springfield, IL 62794-9274

Dorothy M. Gunn
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, IL 60601

PLEASE TAKE NOTICE that today I have filed with the Office of the Clerk of the Pollution Control Board the RESPONDENT'S ANSWER and AFFIRMATIVE DEFENSES of CSX Transportation, Inc. in the above-titled matter. A copy is hereby served upon you.

CSX TRANSPORTATION, INC.

By: 

David L. Rieser
One of its Attorneys

DATED: November 15, 2006

MCGUIREWOODS LLP
77 West Wacker Drive, Suite 4100
Chicago, Illinois 60601
(312) 849-8100

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 Respondent.)

PCB 07-16
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ANSWER and
AFFIRMATIVE DEFENSES

NOW COMES Respondent, CSX Transportation, Inc. ("CSXT"), by and through its attorneys, McGuireWoods LLP, and for its Answer and Affirmative Defenses states and alleges as follows.

COUNT I
Water Pollution

1. This allegation states a legal conclusion and no further answer is required.
2. This allegation states a legal conclusion and no further answer is required.
3. CSXT admits the allegations of Paragraph 3.
4. CSXT denies the allegations of Paragraph 4 and states that the IEPA incident report #20040651 speaks for itself.
5. CSXT admits the allegations of Paragraph 5.
6. CSXT denies the allegations of Paragraph 6 and states that Proposal speaks for itself.
7. CSXT admits the letter was sent but denies the remaining allegations of Paragraph 7 and states that the letter speaks for itself.
8. CSXT denies the allegations of Paragraph 8.

9. CSXT denies the allegations of Paragraph 9 and states that the document speaks for itself.
10. CSXT denies the allegations of Paragraph 10 and states that the document speaks for itself.
11. CSXT denies the allegations of Paragraph 11.
12. CSXT admits the allegations of Paragraph 12.
13. CSXT admits that the Illinois EPA sent Violation Notice, L-2005-01001 to CSXT but denies all other allegations in Paragraph 13 and states that the Violation Notice speaks for itself.
14. CSXT denies the allegations of Paragraph 14.
15. CSXT admits the allegations of Paragraph 15.
16. CSXT denies the allegations of Paragraph 16.
17. CSXT denies the allegations of Paragraph 17.
18. This allegation states a legal conclusion and no further answer is required.
19. This allegation states a legal conclusion and no further answer is required.
20. This allegation states a legal conclusion and no further answer is required.
21. CSXT denies the allegations of Paragraph 21.
22. CSXT denies the allegations of Paragraph 22.
23. CSXT denies the allegations of Paragraph 23.

Wherefore, CSXT respectfully requests the Board to deny all relief requested by the Complainant.

COUNT II
Water Pollution Hazard

- 1 – 21. CSX restates and incorporates by references its answers to Paragraphs 1 – 21 of Count I as Paragraphs 1 – 21 of this Count II as though fully stated herein.
22. This allegation states a legal conclusion and no further answer is required.

23. CSXT denies the allegations of Paragraph 23.

24. CSXT denies the allegations of Paragraph 24.

Wherefore, CSXT respectfully requests the Board to deny all relief requested by the Complainant.

COUNT III
Open Dumping

1 – 16. CSX restates and incorporates by references its answers to Paragraphs 1 – 16 of Count I as Paragraphs 1 – 16 of this Count III as though fully stated herein.

17. This allegation states a legal conclusion and no further answer is required.

18. This allegation states a legal conclusion and no further answer is required.

19. This allegation states a legal conclusion and no further answer is required.

20. CSXT denies the allegations of Paragraph 20.

21. CSXT denies the allegations of Paragraph 21.

Wherefore, CSXT respectfully requests the Board to deny all relief requested by the Complainant.

AFFIRMATIVE DEFENSES

1. The State has no basis to request the Board to order to CSXT to “cease and desist from further violations of the Act” and the Board has no basis to order to CSXT to “cease and desist from further violations of the Act” since CSXT met with the Illinois Attorney General’s Office and the Illinois EPA prior to the filing of this complaint and CSXT submitted documents demonstrating that the release has been completely addressed and that there are no violations of the Illinois Environmental Protection Act.

2. The State has no basis to request the Board to impose a civil penalty on CSXT and the Board has no basis to impose a civil penalty on CSXT since CSXT met with the Illinois Attorney General’s Office and the Illinois EPA prior to the filing

of this complaint and CSXT submitted documents demonstrating that the release has been completely addressed and that there are no violations of the Illinois Environmental Protection Act.

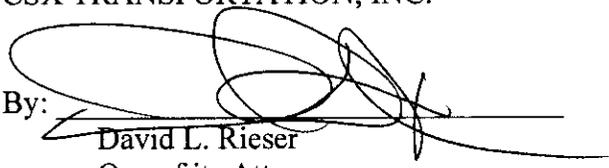
3. Plaintiff's allegations that CSXT failed to respond to Illinois EPA communications do not constitute a violation of the Illinois Environmental Protection Act. (Complaint, Count I, Paragraphs 8, 11, 14, 16.)
4. The Board has no jurisdiction to penalize CSXT with regard to the release alleged in the complaint. CSXT's operations are regulated solely by the federal government pursuant to the Federal Railroad Safety Act, 45 U.S.C. § 20101 *et seq.* and the Interstate Commerce Commission Termination Act, 49 U.S.C. § 10101 *et seq.* Any fault or penalties associated with the release alleged in the complaint could only be assessed pursuant to that statute.

Wherefore, CSXT respectfully requests that the Board dismiss this complaint with prejudice.

Respectfully submitted,

CSX TRANSPORTATION, INC.

By:


David L. Rieser
One of its Attorneys

Dated: November 15, 2006

McGuireWoods LLP
77 West Wacker, Suite 4100
Chicago, IL 60601
Telephone: 312/849-8100

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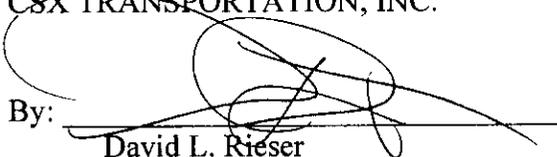
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CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached Respondent's Answer and Affirmative Defenses upon those listed on the attached Notice of Filing by first class mail, postage affixed.

Respectfully submitted,

CSX TRANSPORTATION, INC.

By: 

David L. Rieser
One of its Attorneys

Dated: November 15, 2006

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