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STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 29, 2006

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.***
PCB No. 07-16

Dear Clerk Gunn:

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

Thank you for your cooperation and consideration.

Very truly yours,

A handwritten signature in cursive script, reading "Kristen Laughridge Gale".

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

KLG/pp
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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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: David L. Rieser
McQuire Woods, LLP
77 West Wacker Drive
Suite 4100
Chicago, IL 60601

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, an ANSWER TO AFFIRMATIVE DEFENSES, a copy of which is attached hereto and herewith served upon you.

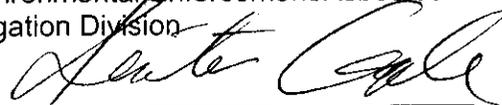
Respectfully submitted,

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: November 29, 2006

CERTIFICATE OF SERVICE

I hereby certify that I did on November 29, 2006, send by First Class 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 and ANSWER TO AFFIRMATIVE DEFENSES

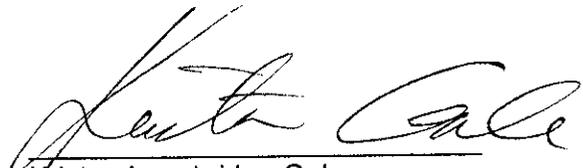
To: David L. Rieser
McQuire Woods, LLP
77 West Wacker Drive
Suite 4100
Chicago, IL 60601

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

A copy was also sent by First Class Mail with postage thereon fully prepaid to:

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Springfield, IL 62794


Kristen Laughridge Gale
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
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DEC 01 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)

ANSWER TO AFFIRMATIVE DEFENSES

NOW COMES Complainant, People of the State of Illinois, with its Answer to Affirmative Defenses, and states as follows:

1. The People admit that the Illinois Attorney General's Office and Illinois EPA met with CSX Transportation, Inc. ("CSX") prior to the filing of the complaint and that CSX submitted documents demonstrating that the release was addressed. The remaining allegations state a legal conclusion and no answer is warranted.

2. The People admit that the Illinois Attorney General's Office and Illinois EPA met with CSX Transportation, Inc. ("CSX") prior to the filing of the complaint and that CSX submitted documents demonstrating that the release was addressed. The remaining allegations state a legal conclusion and no answer is warranted.

3. This claim misstates the Complainant's allegations of violation. The Complainant alleges that CSX violated Sections 12(a), 12(d), and 21(a) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/12(a), 12(d), 21(a). The allegations that CSX failed to respond to Illinois EPA communications goes to the determination of a penalty

pursuant to Section 42(h) of the Act, 415 ILCS 5/42(h), specifically as to the due diligence to comply and self disclosure, 415 ILCS 5/42(h)(2), (h)(6).

4. This contention states a legal conclusion and no answer is warranted. However, the Board has jurisdiction to penalize CSX and the State is not federally preempted from enforcing the Act. The Fifth District Court found in *People v. Conrail Corp.*, 245 Ill.App.3d 167, 613 N.E.2d 784, (5th Dist.1993), that an injunction ordering the railroad to cease transferring waste at the rail yard was not federally preempted. The Court, citing *Chicago & North Western Transportation Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 317, 101 S.Ct. 1124, 1130 (1981), stated that "pre-emption of state law by federal statute or regulation is not favored 'in the absence of persuasive reasons-either that the nature of the regulated subject matter permits no other conclusion, or that the Congress has unmistakably so ordained.' [Citations.] ... The doctrine does not and could not in our federal system withdraw from the States either the 'power to regulate where the activity regulated [is] a merely peripheral concern' of federal law, [citation], ..." *Conrail Corp.*, 245 Ill.App.3d at 182, 613 N.E.2d at 794 (Ill.App. 5 Dist.,1993). In fact, the State maintains a right to regulate railroads as to local hazards. *See Phillips Petroleum Co. V. Illinois Environmental Protection Agency*, 72 Ill.App.3d 217, 390 N.E.2d 620 (2nd Dist. 1979). Furthermore, a high threshold must be met if a state law is to be preempted from conflicting with the purposes of a federal act, and is "limited to state laws which impose prohibitions or obligations which are in direct contradiction to Congress' primary objectives, as conveyed with clarity in the federal legislation." *Gade v. National Solid Wastes Management Ass'n.*, 505 U.S. 88, 98, 112 S.Ct. 2374, 2389 (1992). Neither the Federal Railroad Safety Act, 49 U.S.C. § 20101 *et seq.*, nor the Interstate Commerce Commission Termination Act, 49 U.S.C. § 10101, states that the States are preempted for seeking penalties for violation of State environmental laws. The State's enforcement of the Environmental Protection Act does not

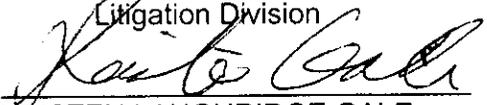
directly conflict with either of the Federal Acts and does not impede the federal railroad safety laws and interstate commerce.

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:


KRISTEN LAUGHRIDGE GALE
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: 11/29/06