

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

KEN BLOUIN,)	
)	
Complainant,)	
)	
v.)	PCB No. 05-217
)	(Enforcement – Noise)
TNT LOGISTICS NORTH AMERICA)	
INC.,)	
)	
Respondent.)	

NOTICE OF FILING

TO: Ms. Dorothy M. Gunn	Bradley P. Halloran, Esq.
Clerk of the Board	Hearing Officer
Illinois Pollution Control Board	Illinois Pollution Control Board
100 West Randolph Street	100 West Randolph Street
Suite 11-500	Suite 11-500
Chicago, Illinois 60601	Chicago, Illinois 60601
(VIA FIRST CLASS MAIL)	(VIA FIRST CLASS MAIL)

(PERSONS ON ATTACHED SERVICE LIST)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board **RESPONDENT'S RESPONSE AND OBJECTION TO COMPLAINANT'S MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT**, a copy of which is herewith served upon you.

Respectfully submitted,

TNT LOGISTICS NORTH
AMERICA INC.,
Respondent,

By: /s/ Thomas G. Safley
One of Its Attorneys

Dated: February 16, 2007

Edward W. Dwyer
Thomas G. Safley
Ryan E. Mohr
HODGE DWYER ZEMAN
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900

CERTIFICATE OF SERVICE

I, Thomas G. Safley, the undersigned, hereby certify that I have served the attached RESPONDENT'S RESPONSE AND OBJECTION TO COMPLAINANT'S MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT upon:

Ms. Dorothy M. Gunn
Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

via electronic mail on February 16, 2007; and upon:

Bradley P. Halloran, Esq.
Hearing Officer
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

Mr. Ken Blouin
6446 Lakeway Drive
Monee, Illinois 60449

by depositing said documents in the United States Mail, postage prepaid, in Springfield, Illinois on February 16, 2007.

/s/ Thomas G. Safley
Thomas G. Safley

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**RESPONDENT’S RESPONSE AND
OBJECTION TO COMPLAINANT’S MOTION
FOR LEAVETO FILE AN AMENDED COMPLAINT**

NOW COMES Respondent, TNT LOGISTICS NORTH AMERICA INC.

(“TNT”), by its attorneys, HODGE DWYER ZEMAN, and for its Response to Complainant’s “Motion For Leave to File an Amended Complaint,” states as follows:

I. INTRODUCTION

1. On January 3, 2007, in PCB 05-212 and PCB 05-213, and on January 4, 2007, in PCB 05-216 and PCB 05-217, Complainants filed documents purporting to be “Amended Complaints” with the Illinois Pollution Control Board (hereinafter the “Board”).

2. On January 16, 2007, Respondent filed its objections and moved the Board to dismiss these filings, as well as Complainants’ original Complaints, by filing its “Objection to Complainant’s “Amended Complaint,” Motion to Dismiss Complaint as Originally Filed, and Alternative Motion for Reversal of Hearing Officer’s Order” (hereinafter “Motion to Dismiss”).

3. Complainant failed to respond to the Respondent’s Motion to Dismiss within the time provided by the Board’s rules, however, during the February 1, 2007

status conference it was agreed that the Complainant's deadline to respond would be extended to February 13, 2007.

4. On February 12, 2007, Complainant filed a document entitled, "Motion For Leave to File an Amended Complaint" (hereinafter "Motion for Leave") with the Board.

II. TNT'S RESPONSE AND OBJECTION TO COMPLAINANT'S MOTION.

5. TNT construes the Motion for Leave to be Complainant's attempt to cure one of the defects identified by TNT in its Motion to Dismiss; specifically, that Complainant attempted to file an amended complaint without first seeking leave of the Board pursuant to 35 Ill. Admin. Code § 103.206(d). See TNT's Motion to Dismiss.

6. Regardless, Complainant's Motion for Leave does not even attempt to cure any other deficiency identified by TNT's Motion to Dismiss.

7. Most importantly, TNT moved the Board to dismiss this matter on the basis that the Board is no longer able to grant the relief sought by the Complainant.

8. Specifically, as stated in the Motion to Dismiss and as attested to in the Supplemental Affidavit filed with the Board on February 5, 2007, TNT no longer leases or operates the facility located at 28500 Ridgeland, Monee, Illinois (hereinafter the "Facility"); likewise, TNT does not have any authority or control over the operations of the Facility.

9. Complainant's Motion for Leave seems to indicate that the Complainant believes the operational change to be a name change only; however, Complainant has presented no evidence that would support such implication.

10. In fact, this operational change is not merely a name change, TNT and the new operator of the Facility are not related in any way. This specific issue has been addressed in TNT's Motion to Dismiss as discussed supra.

11. The Complainant in this matter is seeking a cease and desist order; that is, the "Amended Complaint" requests that the Board "stop the noise" from the Facility. "Amended Complaint" at ¶9.

12. Given that TNT no longer operates nor controls operations at the Facility, TNT would not have the authority or ability to take any actions in response to any cease and desist order issued by the Board in this matter, should the Board find such relief necessary.

13. As the Board does not have authority to grant the requested relief thus this matter should be dismissed. See, James M. Tonne and Jeanine F. Tonne v. Leamington Foods, PCB 93-044, at p. 2 (Ill.Pol.Control.Bd. April 21, 1994). See also, 35 Ill. Admin. Code § 101.200; Beers, PCB 04-204 (Ill.Pol.Control.Bd. July 22, 2004).

III. CONCLUSION

14. As stated above, neither the Complainant's Motion for Leave to File nor its Amended Complaint affect the grounds on which TNT has sought dismissal of this matter. The issue remains that the relief that Complainant seeks against TNT cannot be granted in this case, and therefore Complainant's claims against TNT should be dismissed.

WHEREFORE, Respondent, TNT LOGISTICS NORTH AMERICA INC., respectfully responds and objects to Complainant's "Motion For Leave to File an Amended Complaint." TNT prays that the Board deny Complainant's Motion and grant TNT's Motion to Dismiss currently pending before the Board. Finally, TNT moves the Board to grant TNT all other relief just and proper in the premises.

Respectfully submitted,

TNT LOGISTICS NORTH AMERICA INC.,
Respondent,

By: /s/ Thomas G. Safley
One of Its Attorneys

Dated: February 16, 2007

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TNTL:002/Fil/PCB/Blouin/Response to Motion For Leave to File