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MAR 29 2007

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

STATE OF ILLINOIS
Pollution Control Board

Lisa Madigan
ATTORNEY GENERAL

March 27, 2007

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, Complainant's Response to Respondent's Motion for Summary Judgment and Complainant's Cross Motion for Summary Judgment 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,

A handwritten signature in cursive script, appearing to read "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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MAR 29 2007

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
Jeremy R. Hojnicky
McQuire Woods, LLP
77 West Wacker Drive
Suite 4100
Chicago, IL 60601

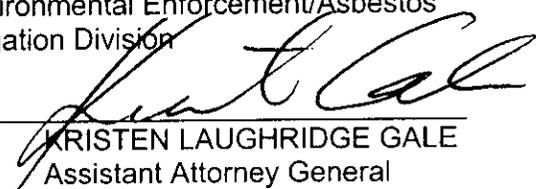
PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, COMPLAINANT'S RESPONSE TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT and COMPLAINANT'S CROSS MOTION FOR SUMMARY JUDGMENT, copies of which are attached hereto and herewith served 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: March 27, 2007

CERTIFICATE OF SERVICE

I hereby certify that I did on March 27, 2007, 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, COMPLAINANT'S RESPONSE TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT and COMPLAINANT'S CROSS MOTION FOR SUMMARY JUDGMENT

To: David L. Rieser
Jeremy R. Hojnicky
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

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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CLERK'S OFFICE

MAR 29 2007

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)

**COMPLAINANT'S RESPONSE TO RESPONDENT'S MOTION
FOR SUMMARY JUDGMENT**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois ("People"), pursuant to Supreme Court Rules 191 and 192, Section 2-1005 of the Code of Civil Procedure, 735 ILCS 5/2-1005 (2004), and Section 101.516 of the Board's Procedural Rules, 35 Ill. Adm. Code 101.516, and at the request of ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA") hereby responds to Respondent's, CSX TRANSPORTATION, INC, Motion for Summary Judgment. In support of this Response, Complainant states as follows:

I. INTRODUCTION

On September 12, 2006, the People filed a three-count Complaint against the Respondent alleging violations of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1-58 (2004), due to a release of 400-500 gallons of diesel fuel at Respondent's Rose Lake Yard facility. On November 15, 2006, Respondent answered the People's complaint. On February 26, 2007, Respondent filed its motion for Summary Judgment. The People received the Respondent's motion on March 2, 2006, therefore, the People's response was due on March

16, 2006. However, the People and the Respondent agreed to extending the Response date until March 30, 2006 in the March 12, 2006 status hearing.

Respondent has failed to identify all undisputed facts in its motion, although, they are included as exhibits. The People agree that there is not a material issue of genuine fact, but that the additional information not included in Respondent's motion shows that Respondent violated the Act. The People have also filed a Cross Motion for Summary Judgment as a separate motion. The People ask that the Board deny Respondent's motion for summary judgment because it failed to identify all undisputed facts, subsequent compliance is not a bar to finding a violation, and the State is not barred by equitable estoppel.

II. STANDARD FOR SUMMARY JUDGMENT

The purpose for summary judgment is to determine whether a genuine issue of fact exists. *Colvin v. Hobart Bros.*, 189 Ill.Dec. 407, 620 N.E. 2d 375, 156 Ill.2d 166 (1993). A motion for summary judgment will be granted when the pleadings, admissions and affidavits reveal that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. 35 Ill. Adm. Code 101.516. *See also, Northern Illinois Emergency Physicians v. Landau, Omahana & Kopka, Ltd.*, 216 Ill.2d 294, 305, 837 N.E.2d 99, 106 (2005). While summary judgment is an expeditious method of disposing of a lawsuit, it should only be allowed when the right of the moving party is clear and free from doubt. *Colvin*, 189 Ill.Dec. at 169-170. The court must consider *all* the evidence before it strictly against the movant and liberally in favor of the nonmovant. *Id*, emphasis added. When considering the pleadings, depositions, admissions, exhibits and affidavits on file, a court must construe them strictly against the movant and liberally in favor of the opponent and enter a summary judgment only when the right of the moving party is clear and free from doubt. *Wilder Binding Co. v. Oak*

III. STATEMENT OF UNDISPUTED FACTS

1. On July 9, 2004, 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.

(Respondent's MSJ).

2. On July 9, 2004, Respondent retained Hulcher Professional Services, Inc. ("Hulcher") to respond to the 400-500 gallon diesel fuel spill. (Respondent's MSJ).

3. On September 29, 2004, Hulcher submitted to CSX a Proposal to Delineate and Remediate Diesel Impacted Soils, Ballast at the CSX Rose Lake Yard ("diesel spill site"). (Admitted, Respondent Answer, Count 1, par.5 and Exhibit B of Respondent's MSJ).

4. The Background Carcinogenic Polycyclic Aromatic Hydrocarbons ("PAH") 95th Percentile Concentrations for St. Clair County are in Section 742, Appendix A, Table H, 35 Ill. Adm. Code Section 742, Appendix A, Table H attached as Exhibit 1.

5. On October 19, 2004, Hulcher returned to the fuel spill site to implement the September 29, 2004 proposal. (Exhibit A of Respondent's MSJ, page 3.)

6. On October 20, 2004, after fluids were removed from the trenches, Hulcher collected six confirmatory soil samples. Four soil samples (S1, S3, S4, and S6) were collected from the bottoms of the excavations and two soil samples (samples S2 and S5) were collected from the sides of the excavations. Soil sample S7 was collected from the rolloff box for waste profiling purposes. The samples were analyzed for PAHs and Volatile Organic Compounds. (Exhibit A of Respondent's MSJ, page 4).

7. The results of the Hulcher samples are shown in Table 2 and Appendix C of Exhibit A of Respondent's MSJ. The results showed that one soil sample, S4, taken from the

bottom of the excavations on the southeast side contained PNAs in exceedance of the Background contamination of St. Clair County, specifically benzo(a)pyrene, benzo(b)fluoranthene, and indeno(1,2,3-cd)pyrene. Furthermore, S4 exceeded the Tier 1 soil remediation objective for industrial/commercial ingestion for benzo (a) pyrene, which is 0.8 mg/kg, 35 Ill. Adm. Code 742, Appendix B, Table B. Soil sample S4 contained 3.2 mg/kg of benzo(a)pyrene. (Respondent's exhibit A, Table 2 and Appendix C, p. 6).

8. On August 2, 2005, Arcadis collected five soil samples and installed five monitoring wells at the diesel spill site. Respondent's Exhibit C. The geology of the site consists of silty sand to a depth of 2 to 6 feet, which is underlain by clay and silty clay to a depth of sixteen feet. Respondent's Exhibit C, p. 4. Groundwater was found between 2 to 5 feet below level surface ("bls"). (Respondent's Exhibit C, p. 4).

IV. 400-500 GALLONS OF DIESEL FUEL WERE RELEASED IN VIOLATION OF THE ACT

Respondent cherry-picked and misled in the presentation of the facts in its motion for summary judgment. Fortunately, Respondent attached as exhibits most of the relevant facts. Respondent admits in its motion for summary judgment, that it released 400-500 gallons of diesel fuel at the CSX Rose Lake Yard. Even after the Hulcher response actions, contamination remained in the soil at the diesel spill site. Both Table 2 and Attachment C of Exhibit A of Respondent's motion show contamination remained at the diesel spill site. Soil sample S4 showed contamination for benzo(a)pyrene, benzo(b)fluoranthene, and indeno(1,2,3-cd)pyrene. Furthermore, soil sample S4 exceeded the Tier 1 soil remediation objective for industrial/commercial ingestion for benzo (a) pyrene, which is 0.8 mg/kg. 35 Ill. Adm. Code 742, Appendix B, Table B. Soil sample S4 contained 3.2 mg/kg of benzo(a)pyrene. As stated in Respondent's motion, no additional remediation activity occurred at the site after

the confirmation soil samples showed a pollutorial impact for over 9 months. The geology of the site shows that groundwater is found at 2 to 3 feet bls and the soil is silty sand. The contamination remained in the silty sand with a groundwater level of only 2 to 3 feet for over 9 months, thereby causing or threatening water pollution and creating a water pollution hazard. Additionally, the Respondent open dumped because pollution remained in the soil for over 9 months. Additional discussion on how Respondent violated the Act is contained in the People's Cross-Motion for Summary Judgment filed with this Response. Respondent's exhibits show the opposite of what is claimed in the motion for summary judgment; that Respondent caused water pollution, created a water pollution hazard and open dumped in violation of the Act. Therefore, Respondent's motion for summary judgment must be denied.

V. SUBSEQUENT COMPLIANCE IS NOT A BAR TO FINDING A VIOLATION

Subsequent compliance is not a bar to finding a violation. Section 33(a) of the Act states "It shall not be a defense to findings of violations of the provisions of this Act, any rule or regulations adopted under this Act...or a bar to the assessment of civil penalties that the person has come into compliance subsequent to the violation" except where an applicable statute of limitations bars the action. 415 ILCS 5/33(a) (2004). The Board has repeatedly held that subsequent compliance is not a defense for finding a violation. See *People of the State of Illinois v. QC Finishers, Inc.*, PCB 01-07 (July 8, 2004), *People of the State of Illinois v. Chevron Environmental Services Co.*, PCB 02-03 (Nov. 6, 2003), *People of the State of Illinois v. Marc Development Corp. and Silver Glen Estates HomeOwners' Assoc.*, PCB 01-150 (July 26, 2001). In fact, in *People v. QC Finishers*, the Board stated "The issue then is not whether subsequent compliance excuses prior violations. It does not." PCB 01-07 (July 8, 2004), p. 15. Furthermore, in *Modine Manufacturing Co. v. Pollution Control Board*, 193 Ill.App.3d 643, 549

N.E. 1379 (1990), Modine made the same contention as the Respondent, that the imposition of a penalty would not aid in the enforcement of the Act because they were no longer in violation at the time the complaint was filed. The Court in that case declined to hold that penalties may not be imposed for wholly past violations. *Id* at 648. The issue before the Board is not whether the Respondent eventually remediated the release, but whether the respondent violated the Act when it released 400-500 gallons of diesel fuel threatening water pollution, creating a water pollution hazard, and open dumping waste. Therefore, the Respondent's claim regarding subsequent compliance prior to filing of the People's complaint must be denied.

VI. THE STATE IS NOT ESTOPPED FROM CLAIMING A VIOLATION OF THE ACT

Any claim implied or otherwise inferred that the State is estopped from claiming a violation of the Act by attaching statements made by an Illinois EPA investigator has no merit. Applying the doctrine of estoppel against the government may impair the government from discharging its governmental functions and may jeopardize valuable public interests. *Brown's Furniture, Inc. v. Wagner*, 171 Ill.2d 410, 665 N.E.2d 795 (1996). A party seeking to estop the government must show that the government made a misrepresentation with knowledge that the misrepresentation was untrue. *Medical Disposal Services, Inc. v. Environmental Protection Agency*, 286 Ill.App.3d 562, 677 N.E.2d 428 (1st Dist. 1997), *People of the State of Illinois v. Panhandle Eastern Pipe Line Co.*, PCB 99-191 (November 15, 2001). In this case, Ms. Vierrege did not make any misrepresentations to the Respondent regarding the final sample results at the disposal site. Therefore, any assertion that the State cannot claim a violation of the Act must be denied.

VII. CONCLUSION

Respondent released 400-500 gallons of diesel fuel into the environment. Respondent's Exhibit A shows contamination remained in the soil at the diesel spill site until the next time Respondent returned to the site over 9 months later. Subsequent compliance to a violation is not a defense for finding a violation and any claim of equitable estoppel has no merit. Therefore, Respondent is not entitled to judgment as a matter of law.

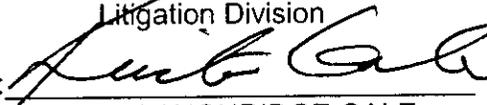
WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, by Lisa Madigan, Attorney General of the State of Illinois, hereby respectfully requests that the Motion for Summary Judgment filed by Respondent be DENIED.

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: 3/27/07

Section 742.APPENDIX A: General

Section 742.TABLE H Concentrations of Polynuclear Aromatic Hydrocarbon Chemicals in Background Soils

Chemical Name	Chicago ^a mg/kg	Metropolitan Areas ^b (mg/kg)	Non-Metropolitan Areas ^c (mg/kg)
2-Methylnaphthalene	-----	0.14	0.29
Acenaphthene	0.09	0.13	0.04
Acenaphthylene	0.03	0.07	0.04
Anthracene	0.25	0.40	0.14
Benzo(a)anthracene	1.1	1.8	0.72
Benzo(a)pyrene	1.3	2.1	0.98
Benzo(b)fluoranthene	1.5	2.1	0.70
Benzo(g,h,i)perylene	0.68	1.7	0.84
Benzo(k)fluoranthene	0.99	1.7	0.63
Chrysene	1.2	2.7	1.1
Dibenzo(a,h)anthracene	0.20	0.42	0.15
Fluoranthene	2.7	4.1	1.8
Fluorene	0.10	0.18	0.04
Indeno(1,2,3-c,d)pyrene	0.86	1.6	0.51
Naphthalene	0.04	0.20	0.17
Phenanthrene	1.3	2.5	0.99
Pyrene	1.9	3.0	1.2
^a Chicago means within the corporate limits of the City of Chicago. ^b Metropolitan area means a populated area, as defined in Section 742.200, (other than the City of Chicago) that is located within any county in a Metropolitan Statistical Area listed in Appendix A, Table G, footnote a. ^c Non-Metropolitan area means a populated area, as defined in Section 742.200, that is not located within any county in a Metropolitan Statistical Area listed in Appendix A, Table G, footnote a.			

(Source: Appendix A, Table H renumbered to Appendix A, Table I and new Appendix A, Table H Added at 31 Ill. Reg. 4063, effective February 23, 2007)

Section 742.APPENDIX A General

Section 742.TABLE I Chemicals Whose Tier 1 Class I Groundwater Remediation Objective Exceeds the 1 in 1,000,000 Cancer Risk Concentration



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

No. PCB 07-16
(Enforcement)

RECEIVED
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MAR 28 2007
STATE OF ILLINOIS
Pollution Control Board

COMPLAINANT'S CROSS MOTION FOR SUMMARY JUDGMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois ("People"), pursuant to Supreme Court Rules 191 and 192, Section 2-1005 of the Code of Civil Procedure, 735 ILCS 5/2-1005 (2004), and Section 101.516 of the Board's Procedural Rules, 35 Ill. Adm. Code 101.516, and at the request of ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA") hereby moves for Summary Judgment against the Respondent, CSX TRANSPORTATION, INC. In support of this Motion, Complainant states as follows:

I. INTRODUCTION

On September 12, 2006, the People filed a three-count Complaint against the Respondent alleging violations of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1-58 (2004), due to a release of 400-500 gallons of diesel fuel at Respondent's Rose Lake Yard facility. On November 15, 2006, Respondent answered the People's complaint. On February 26, 2007, Respondent filed its motion for Summary Judgment. Respondent failed to identify all undisputed facts in its motion, although, they are included as exhibits. The People agree that

there is not a material issue of genuine fact, but that the additional information attached to Respondent's motion as exhibits and attached herein shows that Respondent caused water pollution, created a water pollution hazard and open dumped, in violation of the Act. Therefore, the People ask that the Board enter summary judgment in favor of the People of the State of Illinois and schedule a hearing to determine a penalty under Section 33 and 42 of the Act, 415 ILCS 5/33, 42 (2004).

II. STANDARD FOR SUMMARY JUDGMENT

The purpose for summary judgment is to determine whether a genuine issue of fact exists. *Colvin v. Hobart Bros.*, 189 Ill.Dec. 407, 620 N.E. 2d 375, 156 Ill.2d 166 (1993). A motion for summary judgment will be granted when the pleadings, admissions and affidavits reveal that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. 35 Ill. Adm. Code 101.516. *See also, Northern Illinois Emergency Physicians v. Landau, Omahana & Kopka, Ltd.*, 216 Ill.2d 294, 305, 837 N.E.2d 99, 106 (2005). While summary judgment is an expeditious method of disposing of a lawsuit, it should only be allowed when the right of the moving party is clear and free from doubt. *Colvin*, 189 Ill.Dec. at 169-170. The court must consider *all* the evidence before it strictly against the movant and liberally in favor of the nonmovant. *Id*, emphasis added. When considering the pleadings, depositions, admissions, exhibits and affidavits on file, a court must construe them strictly against the movant and liberally in favor of the opponent and enter a summary judgment only when the right of the moving party is clear and free from doubt. *Wilder Binding Co. v. Oak Park Trust and Sav. Bank*, 135 Ill.2d 121, 552 N.E.2d 783, 142 Ill.Dec. 192 (1990).

By filing cross-motions for summary judgment, the parties invite the court to determine the issues as a matter of law and enter judgment in favor of one of the parties. *State Farm Mut.*

Auto. Ins. Co. v. Coe, 367 Ill.App.3d 604, 855 N.E.2d 173, 305 Ill.Dec. 282 (1st Dist., 2006). The court must determine for itself, nevertheless, that there are no factual issues sufficient to preclude summary judgment, after which the court may determine the issues presented as questions of law. *General Cas. Co. of Illinois v. Carroll Tiling Service, Inc.*, 342 Ill.App.3d 883, 796 N.E.2d 702, 277 Ill.Dec. 616 (2nd Dist., 2003). Where there are no disputed fact questions, nor differing inferences which may be drawn from undisputed facts, summary judgment is proper. *M. Ecker & Co. v. LaSalle National Bank*, 268 Ill.App.3d 874, 645 N.E.2d 335, 206 Ill.Dec. 330 (1st Dist., 1994).

III. STATEMENT OF UNDISPUTED FACTS

1. On July 9, 2004, 400 to 500 gallons of diesel fuel were released at the CSX Rose Lake Yard located at 3900 Roselake Road, East St. Louis, St. Clair County, Illinois. (Respondent's MSJ).

2. On July 9, 2004, Illinois Emergency Management Agency (IEMA) Incident Report, #20040957, was reported to Illinois EPA. (IEMA Incident Report attached as People's Exhibit 1 and affidavit of Cheryl Cahnovsky).

3. On July 9, 2004, Respondent retained Hulcher Professional Services, Inc. ("Hulcher") to respond to the 400-500 gallon diesel fuel spill. (Respondent's MSJ).

4. On September 29, 2004, Hulcher submitted to CSX a Proposal to Delineate and Remediate Diesel Impacted Soils, Ballast at the CSX Rose Lake Yard ("diesel spill site"). (Admitted, Respondent Answer, Count 1, par.5 and Exhibit B of Respondent's MSJ).

5. The Background Carcinogenic Polycyclic Aromatic Hydrocarbons ("PAH") 95th Percentile Concentrations for St. Clair County are in Section 742, Appendix A, Table H of the Board's Regulations, 35 Ill. Adm. Code Section 742, Appendix A, Table H attached as Exhibit 2.

6. On October 11, 2004, Illinois EPA mailed a letter to Respondent inviting Respondent to enter the site into the Site Remediation Program-SRP (Voluntary Program) so the Agency could review and approve the remediation work that is necessary. (Illinois EPA October 11, 2004 letter attached as People's Exhibit 3 and affidavit by Paul Purseglove).

7. On October 19, 2004, Hulcher returned to the fuel spill site to implement the September 29, 2004 proposal. (Exhibit A of Respondent's MSJ, page 3).

8. On October 20, 2004, after fluids were removed from the trenches, Hulcher collected six confirmatory soil samples. Four soil samples (S1, S3, S4, and S6) were collected from the bottoms of the excavations and two soil samples (samples S2 and S5) were collected from the sides of the excavations. Sample S7 was collected from the rolloff box for waste profiling purposes. The samples were analyzed for PNAs and Volatile Organic Compounds. (Exhibit A of Respondent's MSJ, page 4).

9. The results of the Hulcher samples are shown in Table 2 and Appendix C of Exhibit A of Respondent's MSJ. The results showed that one soil sample, S4, taken from the bottom of the excavations on the southeast side contained PAHs in exceedance of the Background contamination of St. Clair County, specifically benzo (a) pyrene, benzo (b) fluoranthene, and indeno (1,2,3-cd) pyrene. Furthermore, S4 exceeded the Tier 1 soil remediation objective for industrial/commercial ingestion for benzo (a) pyrene, which is 0.8 mg/kg, 35 Ill. Adm. Code 742, Appendix B, Table B. Sample S4 contained 3.2 mg/kg of benzo (a) pyrene. (Respondent's exhibit A, Table 2 and Appendix C, p. 6).

10. On December 16, 2004, Illinois EPA received a fax from Hulcher. The fax attached the Teklab, Inc. analytical results dated November 1, 2004. (fax cover page and attachments attached as People's Exhibit 4 and affidavit of Cheryl Cahnovsky). The Teklab, Inc. results are in Appendix C of Respondent's Exhibit A.

11. On December 30, 2004, Illinois EPA inspector, Kathy Vieregge, performed a non-financial records review of the release. Ms. Vieregge reviewed all documents submitted to Illinois EPA by the Respondent and found that confirmation soil samples S4 and S7 exceeded Background Carcinogenic PNA Concentrations. Inspector Vieregge stated that "additional remediation work was required to properly complete and document the cleanup." (Illinois EPA Non-Financial Records Review attached as People's Exhibit 5 and affidavit of Kathy Vieregge).

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. (Admitted, Respondent Answer, Count 1, par.12). The Violation Notice is attached as People's Exhibit 6. The Violation Notice included options for a suggested resolutions: the Respondent could enter the site into the Agency's Site Remediation Program, or submit a proposed Compliance Commitment Agreement. (page 2 of Attachment A of the Violation Notice).

13. 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. (Admitted, Respondent Answer, Count 1, par.15. The NIPLA letter is attached as People's Exhibit 7).

14. On August 2, 2005, Arcadis collected five soil samples and installed five monitoring wells at the diesel spill site. (Respondent's Exhibit C). The geology of the site consists of silty sand to a depth of 2 to 6 feet, which is underlain by clay and silty clay to a depth of sixteen feet. Respondent's Exhibit C, p. 4. Groundwater was found between 2 to 3 feet below level surface (bls). (Respondent's Exhibit C, p. 4).

15. On October 25, 2005, Arcadis collected groundwater samples from the five monitoring wells as the diesel spill site. (Respondent's Exhibit C).

16. On February 23, 2006, the Illinois Attorney General's Office and the Illinois EPA met with the Respondent to discuss enforcement for the diesel fuel release. (Respondent MSJ).

17. In March 2006, Illinois EPA received a copy of the December 21, 2004 Hulcher Environmental Remediation Report, Respondent's Exhibit A, from the Respondent. (Affidavit of Kathy Vierrege).

18. On March 6, 2006, Illinois EPA received the March 3, 2006 Response to the Violation Notice, L-2005-01001, Respondent's Exhibit C. (Affidavit of Kathy Vierrege).

19. On April 14, 2006, after review of the reports submitted by the Respondent, Illinois Attorney General's Office and Illinois EPA formally requested additional sampling at the diesel spill site. The request for additional sampling was because the previous sampling results at the diesel spill site did not disprove the results of Hulcher sample S4 because they were not collected from the S4 location. (Exhibit E of Respondent's MSJ).

20. On May 9, 2006, Arcadis collected two soil samples from the S4 location. (Respondent's Exhibit D).

21. On June 2, 2006, Illinois EPA received the June 1, 2006 Closure Request and Response to Violation Notice, L-2005-01001, Respondent's Exhibit D. (Affidavit of Kathy Vierrege).

IV. RESPONDENT CAUSED WATER POLLUTION

Respondent discharged 400-500 gallons of diesel fuel and allowed contaminants to remain in the soil so as to cause water pollution at the diesel spill site. Respondent misquotes the Board in its description of the Board's definition of water pollution. On page 8 of the *Chalmers* decision, the Board stated that to establish water pollution "it must also be shown that the particular quantity and concentration of the contaminant in question *is likely* to create a

nuisance or render the waters harmful, detrimental, or injurious.” *People of the State of Illinois v. John Chalmers d/b/a John Chalmers Hog Farm*, PCB 96-111 (January 6, 2000), emphasis added. This language is also contained within the definition of water pollution in the act: “Water pollution is...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...” 415 ILCS 5/3.545 (2004). The *Chalmers* case is regarding lagoon overflows from a hog farm. The Board held that the respondent caused or allowed water pollution on five separate occasions. *Chalmers*, PCB 96-111 (January 6, 2000). The releases were from overflows of the respondent’s lagoons and excessive application of liquid manure. *Id.* In the May 6, 1993, discharge, the Board held that the Respondent violated Sections 12(a) and 12(d) of the Act, 415 ILCS 5/12(a),(d), for over-application of livestock waste. *Id.* at 13. The livestock waste flowed into roadside ditches that were only a few inches deep. *Id.* at 12. Illinois EPA Inspector Brockamp stated in his testimony that waters of the State were threatened including the groundwater, because the soil in the area are fairly sandy. *Chalmers* transcript, June 22, 1999, p. 64. The Board found the water in the roadside ditches to be waters of the State under the Act. *Chalmers*, January 6, 2000 decision at 13. Therefore, the Respondent violated Section 12(a) of the Act for discharging waste in the ditches. *Id.* The Board found the same violation for another discharge of livestock wastes on June 15, 1993 due to spraying livestock waste. *Id.* at 15. The only release that the Board did not hold violated Section 12(a) of the Act, was an overflow observed on February 9, 1994, that the Respondent showed went into a bermed area designed to receive overflows. *Id.* at 18.

On July 9, 2004, Respondent released 400-500 gallons of diesel fuel. Respondent’s consultant, Hulcher, took responsive actions including excavation, removal, and notifying Illinois EPA of the diesel spill. On October 20, 2004, Hulcher took confirmatory soil samples from the diesel spill site. The soil samples were analyzed for PAHs and volatile organic chemicals. The

results showed that one soil sample, S4, taken from the bottom of the excavations on the southeast side contained PAHs in exceedance of the Background contamination of St. Clair County, specifically benzo (a) pyrene, benzo (b) fluoranthene, and indeno (1,2,3-cd) pyrene. Furthermore, S4 exceeded the Tier 1 soil remediation objective for industrial/commercial ingestion for benzo (a) pyrene. The Tier 1 soil remediation objective is 0.8 mg/kg, 35 Ill. Adm. Code 742, Appendix B, Table B. Sample S4 contained 3.2 mg/kg of benzo (a) pyrene. (See Respondent's exhibit A, Table 2 and Appendix C). The depths from which the samples S1 through S6 were collected are unknown. (Respondent's Exhibit C, p. 2).

Illinois EPA received a fax copy of the analytical results on December 16, 2004. (People's exhibit 4). The fax did not contain any other information such as the location of the soil samples, the depth of the soil samples, the amount of soil removed, and where the removed soil was disposed of. Illinois EPA's review of the information it had regarding the diesel spill found that additional remediation work was required to properly complete and document the cleanup. (People's exhibit 5).

The next time Respondent's consultants were at the diesel spill location to perform any remediation was on August 5, 2005, over nine months from the date the confirmation samples were taken. Therefore, the pollutants were in the soil for at least over a year. Even still, Respondent's sampling did not show that the pollutants were no longer at the site. When the People finally received and were able to review all of Respondent's reports in March 2006 the People required additional sampling because Respondent's previous sampling was not in the area of sample S4. Those samples were not taken until May 9, 2006. Finally, Respondent's consultants sampled the groundwater at the diesel spill site on October 28, 2005, over a year after the Hulcher confirmatory samples showed contaminants in the soil.

Respondents cannot tell us the depth of the confirmatory samples taken on October 20, 2004. However, the Respondent's exhibits show that groundwater is at 2 to 3 feet and the shallow soil is silty sand from 2 to 6 feet. Furthermore, the exhibits show that from July 9, 2004 until at the latest May 9, 2006, pollutants remained in the soil, benzo (a) pyrene, benzo (b) fluoranthene, and indeno (1,2,3-cd) pyrene. In fact, benzo (a) pyrene was found to be above the Tier I Industrial/Commercial limit. (Respondent's exhibit A, Table 2). Respondent's contention that the diesel spill never impacted the groundwater does not hold merit, since their sampling cannot show the diesel spill never impacted the groundwater, only that the groundwater showed no impacts when Respondent finally sampled it over a year after the diesel spill. The Respondent relies primarily on *Jerry Bliss v. Environmental Protection Agency*, 138 Ill.App.3d 699, 704, 485 N.E.2d 1154, 1157 (1985). In that case, the Illinois EPA inspectors were present at the time of the spraying of black liquid at the rail yard. *Id.* The Illinois EPA inspectors took samples of the sprayed material, and analysis showed it contained trichloroethylene ("TCE"). *Id.* The Court concluded though that no effort was made by the People to show that the particular quantity and concentration of TCE sprayed by the Defendant was likely to render the waters nearby harmful. *Id.* The facts in this case are different. In this case, the People were not only not present at the time of the release, but were essentially ignored until after the February 23, 2006 meeting, when all of the reports regarding the release were finally provided by the Respondent. The People have shown that diesel fuel was released into the environment, that Respondents left constituents of the diesel fuel in the environment for over a year, and that groundwater is located 2 to 3 feet below surface level and the soil is silty sand from 2 to 6 feet. The People have not only made the effort, but have shown that the Respondent released contaminants in sufficient quantity and concentration likely to render the groundwater harmful.

Just like the discharges in the *Chalmers* case, the presence of the pollutants, benzo (a) pyrene, benzo (b) fluoranthene, and indeno (1,2,3-cd) pyrene, in silty sand soil at such close proximity to the groundwater from July 2004 until at the latest August 5, 2006, was likely to render the groundwater harmful, detrimental, or injurious. Therefore, Respondent caused or allowed the discharge of contaminants into the environment tending to cause water pollution in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2004).

V. RESPONDENT CREATED A WATER POLLUTION HAZARD

Respondent deposited 400-500 gallons of diesel fuel into the environment so as to cause a water pollution hazard. Creation of a water pollution hazard, under Section 12(d) of the Act, 415 ILCS 12(d), is where “the conduct may endanger the safety of the citizens” and there is no assurance that it will not, although a change in conduct could make that assurance forthcoming. *Tri-County Landfill Co. v. Illinois Pollution Control Board*, 41 Ill.App.3d 249, 258, 353 N.E.2d 316, 324 (1976). *Tri-County* is regarding multiple violations at a landfill. The Court upheld the Board’s finding that the Tri-County Landfill Co. and the Elgin Landfill Co. created a water pollution hazard. *Id.* Two aquifers, an upper aquifer and a lower aquifer, were beneath the landfill sites. *Id.* The upper aquifer was contaminated but the lower aquifer was not. *Id.* The Board and the Court rejected the landfill company’s assertion that the agency show that the lower aquifer will be polluted. *Id.* The Board found and the Court agreed that a water pollution hazard from the landfill leachate existed because there was no assurance that pollution would not occur. *Id.* at 258. The Board reasserted that a water pollution hazard is when “a respondent may have acted to endanger the citizens of the State of Illinois,” in *People of the State of Illinois v. Petco Petroleum Corp.*, PCB 05-66 (February 3, 2005), p. 3. In *Chalmers*, the Board not only found a violation of 12(a) for the May 6, 1993 and June 15, 1993 releases but also a violation of

12(d) because the respondent deposited contaminants upon the land so as to create a water pollution hazard. *Chalmer*, PCB 96-111 (January 6, 2000).

In this case, Respondent released 400-500 gallons of diesel fuel on July 9, 2004. The confirmatory sample taken on October 20, 2004 showed that the soil contained PAHs in exceedance of the background contamination of St. Clair County and exceeded the Tier 1 soil remediation objective for industrial/commercial ingestion for benzo (a) pyrene. Furthermore, as shown by Respondent's exhibits, the groundwater was found between 2 to 3 feet and the soil from 2 to 6 feet is silty sand. There is no assurance that Respondent's release of diesel fuel and leaving the pollutants in the soil did not endanger the safety of the citizens, although more thoroughly responding to the diesel fuel release could have made that assurance forthcoming. *Tri-County*. Therefore, by releasing diesel fuel and leaving pollutants in the soil in such proximity to the groundwater, Respondent created a water pollution hazard in violation of Section 12(d) of the Act, 415 ILCS 5/12(d)(2004).

VI. RESPONDENT CAUSED OR ALLOWED OPEN DUMPING

The Board has held that contamination from leaking gasoline is open dumping under Section 21(a) of the Act, 415 ILCS 5/21(a). *Universal Scrap Metals, Inc. v. Flexi-Van Leasing, Inc.*, PCB 99-149 (April 5, 2001), *People v. State Oil Co.* (August 19, 1999), PCB 97-103, See also, *Agricultural Excess & Surplus Ins. v. A.B.D. Tank & Pump Co.*, 878 F. Supp. 1091, 1095 (N.D. Ill. 1995), *Zands v. Nelson*, 779 F. Supp. 1254 (S.D.Cal. 1991). Substances leaked and contaminated the soil are wastes within the meaning of Section 21(a) of the Act. *Universal Scrap Metals, Inc.*, PCB 99-149 (April 5, 2001), *People v. State Oil Co.* (August 19, 1999), PCB 97-103. Open dumping occurs when waste is consolidated at a disposal site that does not fulfill sanitary landfill requirements. 415 ILCS 5/3.305 (2004). The diesel fuel released at the spill site

was a waste under Section 3.535 of the Act, 415 ILCS 5/3.535 (2004). The diesel spill site does not fulfill the requirements of a sanitary landfill because it is in the middle of a switch in a rail yard. In *EPA v. Pollution Control Board*, 219 Ill.App.3d 975, 579 N.E.2d 1215 (1991), the Court reversed the Board's denial of the imposition of a civil penalty for an administrative Illinois EPA issued against John Vander for open dumping of waste in a manner that results in litter and open burning. Vander demolished two buildings and then burned the debris at the demolition site. *Id.* The Board found that Vander did not violate the Act because the Board did not believe Vander had open dumped. *Id.* The Court disagreed. *Id.* The Court found that the demolition debris was waste, that it was consolidated from at least one source, and that the site was not a sanitary landfill. *Id.* The Court found that there must be disposal for open dumping to occur. *Id.* at 979. The Court looked to the definition of disposal which is:

the discharge,....spilling, leaking or placing of any waste or hazardous waste into or on any land or water...so that such waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters. 415 ILCS 5/3.185 (2004).

The Court found that if waste is cleared away to another location before it is allowed to dissipate back into the environment the site is not a disposal site. *Id.* Once Vander burned the debris instead of moving it away, the site became a disposal site because the debris was allowed to dissipate back into the environment. *Id.* Therefore, the Court held that Vander had open dumped in violation of the Act. *Id.*

Respondent left the pollutants in the soil as evidenced by its own Exhibit A. The confirmatory samples taken on October 20, 2004 contained benzo (a) pyrene, benzo (b) fluoranthene, and indeno (1,2,3-cd) pyrene and exceeded the Tier 1 soil remediation objective for industrial/commercial ingestion for benzo (a) pyrene. Benzo (a) pyrene, benzo (b) fluoranthene, and indeno (1,2,3-cd) pyrene are constituents of the diesel fuel. After the October 20, 2004 sampling event which showed contamination, Respondent did nothing at the

diesel spill site until over 9 months later. The Respondent spilled or leaked diesel fuel, a waste, on land such that the diesel fuel and its constituents thereof were allowed to dissipate back into the environment. As in *EPA v. Pollution Control Board*, the diesel spill site became a disposal site when Respondents left the waste and its constituents thereof in the soil. The disposal site, the rail yard, is not a sanitary landfill. Therefore, Respondents caused or allowed open dumping and violated Section 21(a) of the Act, 415 ILCS 5/21(a) (2004).

VII. KNOWLEDGE OR INTENT IS NOT AN ELEMENT IN FINDING A VIOLATION

Knowledge, intent or scienter is not an element to be established in finding of a violation. *Meadowlark Farms Inc. v. Illinois Pollution Control Board*, 17 Ill.App.3d 851, 308 NE2d 829 (1974). Therefore, Respondent's claim that the release of the diesel fuel was an accident has no effect on the finding of a violation.

VIII. CONCLUSION

The material facts proving violations and liability in this case are not in dispute. The Respondent released pollutants into the environment threatening water pollution and creating a water pollution hazard in violation of Section 12(a) and 12(d) and caused or allowed open dumping in violation of Section 21(a). In Respondent's answer to the People's complaint, Respondent denies the People's contention that Respondent failed to respond to the Section 31 letters. Therefore, the only material issues of genuine facts are those which determine the penalty under Section 42(h), such as Respondents due diligence to comply with the Act including its response and lack thereof to Illinois EPA's requests for information, and Respondents failure to self disclose its violations of the Act.

WHEREFORE, Complainant, People of the State of Illinois, respectfully requests that the Board enter a final order:

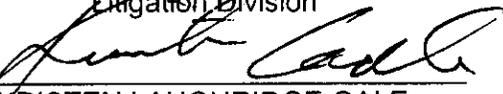
- A) Granting Complainant's motion for summary judgment;
- B) Finding that the Respondent, CSX TRANSPORTATION, INC., violated Sections 12(a), 12(d), and 21(a) of the Act, 415 ILCS 5/21(a), (d), 21(a) (2004);
- C) Schedule hearing to determine the penalty for Respondent's violations under Section 33 and 42 of the Act, 415 ILCS 5/33, 42 (2004).

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: 3/27/07

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
vs.)	No. PCB 07-16
)	(Enforcement)
CSX TRANSPORTATION, INC., a)	
Virginia corporation,)	
)	
Respondent.)	

AFFIDAVIT OF CHERYL CAHNOVSKY

Upon penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that I verily believe the same to be true:

1. I, CHERYL CAHNOVSKY, am employed by the Illinois Environmental Protection Agency ("Illinois EPA"), as an Environmental Protection Specialist in Emergency Operation Unit. I have been employed by the Illinois EPA for approximately 12 years.

2. As part of my duties in the Office of Emergency Operations, I am responsible for responding to and assisting or overseeing responses to environmental releases, as well as reviewing technical submissions relative to such releases. In responding to environmental releases, I coordinate with industry, contractors, county EMA, county HAZMAT teams, State and Federal agencies, and the public. In addition, I am responsible for reviewing sampling plans, environmental remediation plans and completion reports to evaluate their sufficiency and appropriateness. I have a Masters Degree in Environmental Studies from Southern Illinois University at Edwardsville.

3. On July 9, 2004, I received a fax from the Illinois Emergency Management Agency attaching the Illinois HazMat Incident Report, #20040957, addressed to me or Tom

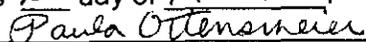
Powell. The July 9, 2004 fax, including the cover sheet and the HazMat Report, attached hereto as Exhibit 1, is in the same condition as when I first received it.

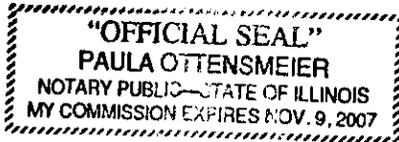
4. On December 16, 2004, I received a fax attaching the analytical data from Teklab, Inc., for the Rose Lake spill, addressed to me, from John H. Broadus, Hulcher Professional Services, Inc. The December 16, 2004 fax, including the cover sheet and analytical results, attached hereto as Exhibit 4, is in the same condition as when I first received it.

FURTHER AFFIANT SAYETH NOT


CHERYL CAHNOVSKY

Subscribed and sworn to before me

this 15th day of March 2007

NOTARY PUBLIC



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,))	
)	
vs.)	No. PCB 07-16
)	(Enforcement)
CSX TRANSPORTATION, INC., a)	
Virginia corporation,)	
)	
Respondent.)	

AFFIDAVIT OF PAUL PURSEGLOVE

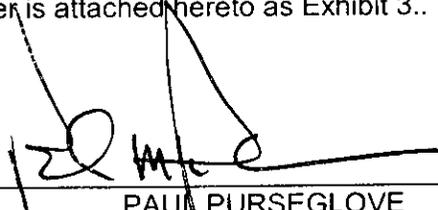
Upon penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that I verily believe the same to be true:

1. I, PAUL PURSEGLOVE, am employed by the Illinois Environmental Protection Agency ("Illinois EPA"), as Manager, Field Operations Section in the Bureau of Land. I have been employed by the Illinois EPA for approximately 26 years.

2. As part of my duties in the Bureau of Land, I review referrals from the Agency's Office of Emergency Responses relative to significant releases or spills that require additional actions to confirm that a complete and proper cleanup has been achieved.

3. On October 11, 2004, I wrote and signed a letter to Mr. Joseph W. Tupa, Manager, CSXT regarding IEMA Incident # 20040957 by certified mail and signed for receipt on November 16, 2004. The October 11, 2004 letter is attached hereto as Exhibit 3..

FURTHER AFFIANT SAYETH NOT



PAUL PURSEGLOVE

Subscribed and sworn to before me

this 21st day of March 2007
Catherine R. Hunter
 NOTARY PUBLIC



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,))	
)	
vs.)	No. PCB 07-16
)	(Enforcement)
CSX TRANSPORTATION, INC., a)	
Virginia corporation,)	
)	
Respondent.)	

AFFIDAVIT OF KATHARINE VIERREGÉ

Upon penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that I verily believe the same to be true:

1. I, KATHARINE VIERREGÉ, am employed by the Illinois Environmental Protection Agency ("Illinois EPA"), as Environmental Protection Specialist III in the Bureau of Land. I have been employed by the Illinois EPA for approximately 13 years.

2. As part of my duties in the Bureau of Land, I perform oversight of state funded investigations and remediation of regulated sites. I inspect and investigate solid waste facilities such as open dump sites. I also perform compliance inspections and investigations, including RCRA investigations at CESQGs, Small Quantity Generator facilities, and Large Quantity Generator facilities. Finally, I interpret scientific data relating to facilities and other regulatory sites, including sample collection results and subsurface data.

3. I have a bachelors of science degree in Geology from the University of Illinois, Champaign-Urbana. My qualifications also include the following: I have personally been involved in conducting 500 inspections of various types, including RCRA inspections.

4. I am familiar with the Illinois Attorney General's case involving and the allegations against CSX Transportation, Inc. In support of the People's Response and Motion for Summary Judgment, I provide the following factual statements, personal observations, and opinions and conclusions based upon my experience and expertise.

5. On December 30, 2004, I conducted a non-financial records review memo for the diesel spill release at CSX Transportation, Inc. located at 3900 Rose Lake Rd in East St. Louis, St. Clair County, Illinois. As part of the regular practice of business at the Illinois EPA, I reviewed all of the documents described in the memo and created a non-financial records review memo of the documents I reviewed. The non-financial records review memo was created during and after the document review. Upon completion of the non-financial records review memo, it was kept in the course of regularly conducted business activity at the Illinois EPA. The non-financial records review memo I created is attached hereto as Exhibit 5.

6. In March 2006, I received a copy of the December 21, 2004 Hulcher Environmental Remediation Report.

7. On March 6, 2006, I received the March 3, 2006 Response to the Violation Notice, L-2005-01001.

8. On June 2, 2006, I received the June 1, 2006 Closure Request and Response to Violation Notice, L-2005-01001.

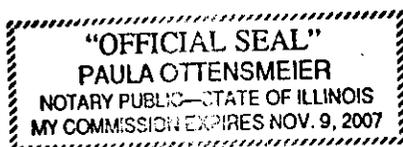
FURTHER AFFIANT SAYETH NOT

Katharine Vieregge
KATHARINE VIERGE

Subscribed and sworn to before me

this 22nd day of March 2007

Paula Ottensmeier
NOTARY PUBLIC



Refer to file

OB

Incident



EM/2000
Incident Recorder

Illinois HazMat Report Incident #: H 20040957

Entered by Toni Watkins on 07/08 at 08:34

Incident Type: Illinois HazMat Report
 Data Input Status: Open Close
 Incident Level: Main Incident Sub-Incident

1. Caller: MIKE LUNSFORD	14. On Scene Contact: DAVID HAGERMAN On Scene Phone #: 618/407-7214
2. Call back phone#: 615/943-6167	15. No. Injured: NONE Where Taken:
3. Caller Represents: CSX TRANSPORTATION	16. Public health risks and/or precautions taken, including # evacuated: NONE
4. Type of Incident: LEAK OR SPILL	17. Assistance needed from State Agencies: NONE
5. Incident Location Street: 38TH ST. AT CSX ROSE LAKE YARD City: EAST ST. LOUIS IN County: MADISON Milepost: Sec.: Twp.: Range:	18. Containment/cleanup actions and plans: HULCHERS FOR CLEANUP
6. Area Involved: RAIL YARD	19. Weather: NONE Temp.: deg. F / Wind Dir. / Speed m.p.h.
7. Material (s) Involved: DIESEL FUEL Material Type: LIQUID CAS#: UNK LIN/NA#: UNK Is this a 302 (a) Extremely Hazardous Substance? NO Is this a RCRA Hazardous Waste? NO Is this a RCRA regulated facility?	20. Responsible Party: CSX TRANSPORTATION Contact Person: JOE TUPA Phone #: 708/832-2098 Mailing Address: 1700 W. 167TH ST., CALUMET CITY, IL 60409
8. Container: RR CAR Container Size: 3,000 GAL.	<i>Hulcher hired to cleanup in fire site. Struck 2 side glass on locomotive. 300-400 lbs. Placed. Put plastic put down and soil. Still by...</i>
9. Amount Released: 400-500 GAL. Rate of Release: /min.	Notifications: 0841 FAXED left address - containe IEPA/SFM/REG.8/NRTP/ICC/SPCC/IDOT left message to Hulcher to return call July 7, 2004
10. Cause of Release: LOCOMOTIVE STRUCK ANOTHER CAR IN THE YARD AND KNOCKED SIGHT GLASS OFF FUEL TANK	Hulcher # 708/653-2559
11. Estimated Spill Extent: 30 SQUARE FEET	On Scene - Dave Foster, David Hulcher Fire: - and remove all parties. Told Tom Police: - street in ground. Put his microbes Sheriff: - into ground. Put about 800 gallons ESDA: - Other: - 12 ground.
12. Occurred - Date: 07/08/04 Time: 23:00 Discovered - Date: 07/09/04 Time: 07:30	
13. Emergency Units Contracted - NO Fire: - Police: - Sheriff: - ESDA: - Other: -	

*7/16/2004
Toni Watkins
Borden
- 5:11 AM
Toni Watkins
paid not complete
if results*

*Aug 17, 2004 - Dave Foster told need fuel...
STL Laboratory Aug 17, 2004
Steve Havel - 618/397-2544 - changed and...
Hulcher - still...*

**FAX FROM THE OFFICE OF EMERGENCY RESPONSE
EMERGENCY OPERATIONS UNIT**

**Deliver to:
Collinsville Region 6**

**Regional Coordinator and
EOU staff: Tom Powell or Cheryl Cahnovsky**

- DWPC -- INITIAL _____
- DPWS -- INITIAL _____
- BOL -- INITIAL _____
- BOA -- INITIAL _____

**To: Illinois Environmental Protection Agency --
Collinsville Regional Office**

Phone Number: 618/346-5120

Fax Number 618/346-5155

**From: Illinois Environmental Protection Agency --
Emergency Operation Unit**

Phone Number: 217/782-3637

Fax Number: 217/524-4036

**The attached, for your information, is an Illinois HazMat Incident Report
received from the Illinois Emergency Management Agency.**

**If you do not receive all of the pages or the pages are illegible
please contact us as soon as possible.**

Section 742.APPENDIX A: General

Section 742.TABLE H Concentrations of Polynuclear Aromatic Hydrocarbon Chemicals in Background Soils

Chemical Name	Chicago ^a mg/kg	Metropolitan Areas ^b (mg/kg)	Non-Metropolitan Areas ^c (mg/kg)
2-Methylnaphthalene	-----	0.14	0.29
Acenaphthene	0.09	0.13	0.04
Acenaphthylene	0.03	0.07	0.04
Anthracene	0.25	0.40	0.14
Benzo(a)anthracene	1.1	1.8	0.72
Benzo(a)pyrene	1.3	2.1	0.98
Benzo(b)fluoranthene	1.5	2.1	0.70
Benzo(g,h,i)perylene	0.68	1.7	0.84
Benzo(k)fluoranthene	0.99	1.7	0.63
Chrysene	1.2	2.7	1.1
Dibenzo(a,h)anthracene	0.20	0.42	0.15
Fluoranthene	2.7	4.1	1.8
Fluorene	0.10	0.18	0.04
Indeno(1,2,3-c,d)pyrene	0.86	1.6	0.51
Naphthalene	0.04	0.20	0.17
Phenanthrene	1.3	2.5	0.99
Pyrene	1.9	3.0	1.2

^a Chicago means within the corporate limits of the City of Chicago.

^b Metropolitan area means a populated area, as defined in Section 742.200, (other than the City of Chicago) that is located within any county in a Metropolitan Statistical Area listed in Appendix A, Table G, footnote a.

^c Non-Metropolitan area means a populated area, as defined in Section 742.200, that is not located within any county in a Metropolitan Statistical Area listed in Appendix A, Table G, footnote a.

(Source: Appendix A, Table H renumbered to Appendix A, Table I and new Appendix A, Table H Added at 31 Ill. Reg. 4063, effective February 23, 2007)

Section 742.APPENDIX A General

Section 742.TABLE I Chemicals Whose Tier 1 Class I Groundwater Remediation Objective Exceeds the 1 in 1,000,000 Cancer Risk Concentration





ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276, 217-782-3397
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601, 312-814-6026

ROD R. BLAGOJEVICH, GOVERNOR RENEE CIPRIANO, DIRECTOR

217-524-5597

October 11, 2004

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7002 3150 0000 1114 8595

Mr. Joseph W. Tupa
Manager, Hazardous Material Field Services
CSXT
1700 - 16th Street
Calumet, IL 60409-5452

Re: IEMA Incident 20040957

Dear Mr. Tupa:

It has come to my attention that as a result of a July 9, 2004 accident a 500 gallon release of diesel fuel occurred in your Rose Lake facility in East St. Louis. I have reviewed the July 14, 2004 letter that you sent to our Office of Emergency Report.

Because of the release and the nature of the work that will be necessary to clean it up it is necessary for CSX Transportation to enter this site into the Illinois EPA's Site Remediation Program-SRP (Voluntary Program) so the Agency can review and approve the remediation work that is necessary. The mutual objective is for the Agency to issue a No Further Remediation (NFR) letter to CSX indicating that the spill has been properly cleaned up to the satisfaction of the Illinois EPA. Up until now your point of contact with the Agency has been the Office of Emergency Response. However, due to the nature of the spill and the time and technical complexities that will be associated with the clean up it is necessary for the Agency's SRP to be involved. Your participation in the voluntary program demonstrates a desire to work with the Illinois EPA to assure a complete and proper clean up. Failure to remediate this incident in a fashion protective to human health and the environment may result in an enforcement action.

You can find out more about the Agency's SRP Program by visiting our web site www.epa.state.il.us/land/site-remediation.

I respectfully request that you reply to this letter within two weeks.

Sincerely,

Paul M. Purseglove, Manager
Field Operations Section
Bureau of Land

cc: Larry Eastep IEPA-SRP
Roger Louder - OER
Bill Ingersoll - Legal
Collinsville Region - Chris Cahnovsky

RECEIVED
IEPA

OCT 14 2004

COLLINSVILLE

EXHIBIT
3

1630450027 - St. Clair IEMA # 20040957
CSX

Referred to
BDL



HULCHER SRP File
SERVICES INC.

CSX Transportation

Rose Lake Yard East St. Louis

FAX COVER PAGE

To:	Illinois DEQ / Cheryl Cahnovsky	From:	John H. Broadus, PE, CAPM
Fax:	618 346-5155	Pages:	12
Phone:	618 346-5120	Date:	December 16, 2004
Re:	CSX Rose Lake Yard spill	CC:	

Urgent For Review Please Comment Please Reply Please Recycle

• **Comments:** Cheryl, attached is the analytical data for the referenced spill event. I will be in contact with Steve Heard to get the information required to generate your report. Please feel free to contact me if you need additional information. Sorry about the mix up. Thank you.

RECEIVED

DEC 22 2004

IEPA-DLPC

RELEASABLE

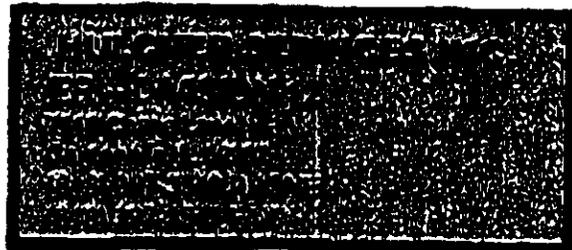
JAN 06 2005

REVIEW

EXHIBIT
4

WCA

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Fax Cover Page

To: Scott Lowry	From: STEVE HEARD
Fax: 8006595471	Date: November 17, 2004
Phone: 8008598032	CC: File
Ref: CSX Analytical	Pages: 11 w/cover

● Comments: Scott here is the analytical for CSX Rose lake Yard. The diesel fuel spill that you wrote the remediation plan for Cheryl with the State. Sample # 7 is the contaminated soil from the excavation so there is no confusion. Tomorrow I will get my notes together and fax them to you as well. This should give you everything you need to write the report. Again I need any time that you need to put on this job that would be billable for you or your staff on a time sheet and submitted to me to put the invoice together in the end.

IF YOU HAVE ANY QUESTIONS, PLEASE CALL ME AT THE NUMBERS LISTED BELOW.

THANKS,

STEVE HEARD

(618) 397-3549 OFFICE

(618) 397-3547 FAX

(816) 695-4662 MOBILE

TEKLAB, INC.

5445 HORSESHOE LAKE ROAD
COLLINSVILLE, ILLINOIS 62234

ENVIRONMENTAL TESTING LABORATORY

TEL: 618-344-1004

FAX: 618-344-1005

November 01, 2004

Will Mathis
Hulcher Service, Inc.
7610 Chase Lane
Centerville, IL 62207
TEL: (618) 397-3549
FAX: (618) 397-3547



NELAP Accredited #100226

RE: CSX 106810

Order No. 04100665

Dear Will Mathis:

TEKLAB, INC received 7 samples on 10/27/04 2:50:00 PM for the analysis presented in the following report.

Samples are analyzed on an as received basis unless otherwise requested and documented. The sample results contained in this report relate only to the requested analytes of interest that have been tested. IL ELAP and NELAP accredited fields of testing are indicated by the letters NELAP under the Certification column

All quality control criteria applicable to the test methods employed for this project have been satisfactorily met and are in accordance with NELAP/Part 186 except where noted in the Case Narrative. The following report shall not be reproduced, except in full, without the written approval of Teklab, Inc.

If you have any questions regarding these tests results, please feel free to call.

Sincerely,

Michael L. Austin
Director of Operations

TEKLAB, INC.

5445 HORSESHOE LAKE ROAD
COLLINSVILLE, ILLINOIS 62234

ENVIRONMENTAL TESTING LABORATORY

TEL: 618-344-1004
FAX: 618-344-1005

Client: Hulcher Service, Inc.
Project: CSX 106810
LabOrder: 04100665
Report Date: November 01, 2004

CASE NARRATIVE

Samples were received with insufficient amount of time to meet hold time requirements for total solids analysis.

Analytical Comments for METHOD SV_8310S_S, SAMPLE 04100665-001A, 002A, 003A, 004A, 005A, 006A, 007A: Elevated reporting limit due to sample composition. No surrogate recovery due to matrix interference.
Analytical Comments for METHOD V_BTEX_S_5030, SAMPLE 04100665-001B, 002B, 003B, 005B, 006B: Elevated reporting limit due to high levels of target and/or non-target analytes.
Analytical Comments for METHOD V_BTEX_S_5030, SAMPLE 04100665-004B, 007B: Matrix interference present in sample.

Qualifiers

DF - Dilution Factor	B - Analyte detected in the associated Method Blank	E - Value above quantitation range
RL - Reporting Limit	J - Analyte detected below reporting limits	H - Holding time exceeded
ND - Not Detected at the Reporting Limit	R - RPD outside accepted recovery limits	D - Diluted out of sample
Surv - Surrogate Standard added by lab	S - Spike Recovery outside accepted recovery limits	M1 - Matrix interference
TN1C - Too numerous to count	* - Value exceeds Maximum Contaminant Level	DN1 - Did Not Ignite
IDPH - Illinois Department of Public Health	NELAP - IL ELAP and NELAP Accredited Field of Testing	

TEKLAB, INC.

5449 HORSESHOE LAKE ROAD
COLLINSVILLE, ILLINOIS 62234

ENVIRONMENTAL TESTING LABORATORY

TEL: 618-344-1004
FAX: 618-344-1005

Laboratory Results

CLIENT: Hulcher Service, Inc.
WorkOrder: 04100665
Lab ID: 04100665-001
Report Date: 01-Nov-04

Client Project: CSX 10-810
Client Sample ID: #1
Collection Date: 10/20/04 3:40:00 PM
Matrix: SOLID

Analyses	Certification	RL	Qual	Result	Units	DF	Date Analyzed	Analyst
ASTM D2974								
Percent Moisture		0.1	M	38.1	%	1	10/29/04	JRS
STANDARD METHODS 18TH ED. 2540 G								
Total Solids		0.1	M	63.8	%	1	10/29/04	JRS
SW-846 3550B. 8310. POLYNUCLEAR AROMATIC HYDROCARBONS BY HPLC								
Acenaphthene	NELAP	0.70		1.1	mg/Kg-dry	1	10/28/04	TDN
Acenaphthylene		0.70		ND	mg/Kg-dry	1	10/28/04	TDN
Anthracene	NELAP	0.23		ND	mg/Kg-dry	1	10/28/04	TDN
Benzo(a)anthracene	NELAP	0.19		1.5	mg/Kg-dry	1	10/28/04	TON
Benzo(a)pyrene	NELAP	0.23		1.2	mg/Kg-dry	1	10/28/04	TON
Benzo(b)fluoranthene	NELAP	0.23		1.6	mg/Kg-dry	1	10/28/04	TDN
Benzo(g,h,i)perylene	NELAP	0.23		1.3	mg/Kg-dry	1	10/28/04	TDN
Benzo(k)fluoranthene	NELAP	0.23		0.72	mg/Kg-dry	1	10/28/04	TDN
Chrysene	NELAP	0.23		1.8	mg/Kg-dry	1	10/28/04	TDN
Dibenzo(a,h)anthracene	NELAP	0.23		ND	mg/Kg-dry	1	10/28/04	TON
Fluoranthene	NELAP	0.47		2.4	mg/Kg-dry	1	10/28/04	TON
Fluorene	NELAP	0.23		ND	mg/Kg-dry	1	10/28/04	TDN
Indeno(1,2,3-cd)pyrene	NELAP	0.23		1.1	mg/Kg-dry	1	10/28/04	TDN
Naphthalene	NELAP	0.94		ND	mg/Kg-dry	1	10/28/04	TON
Phenanthrene	NELAP	0.23		1.3	mg/Kg-dry	1	10/28/04	TDN
Pyrene	NELAP	0.23		1.1	mg/Kg-dry	1	10/28/04	TDN
Surr: Terphenyl-d 14		28.7-171	S	0	%REC	1	10/28/04	TDN
SW-846 5030. 0260B. VOLATILE ORGANIC COMPOUNDS BY GC/MS								
Benzene	NELAP	75.1		ND	ug/Kg-dry	25	10/29/04 6:33:00 PM	HLR
Toluene	NELAP	375		ND	ug/Kg-dry	25	10/28/04 6:33:00 PM	HLR
Ethylbenzene	NELAP	375		ND	ug/Kg-dry	25	10/29/04 6:33:00 PM	HLR
Xylenes, Total	NELAP	375		ND	ug/Kg-dry	25	10/29/04 6:33:00 PM	HLR
Surr: 1,2-Dichloroethane-d4		72.6-122		103	%REC	25	10/28/04 6:33:00 PM	HLR
Surr: 4-Bromofluorobenzene		75.6-120		88.9	%REC	25	10/28/04 6:33:00 PM	HLR
Surr: Dibromofluoromethane		74.1-121		36.0	%REC	25	10/28/04 6:33:00 PM	HLR
Surr: Toluene-d8		82.6-112.8		104	%REC	25	10/28/04 6:33:00 PM	HLR

TEKLAB, INC.

5445 HORSESHOE LAKE ROAD
COLLINSVILLE, ILLINOIS 62234

ENVIRONMENTAL TESTING LABORATORY

TEL: 618-344-1004
FAX: 618-344-1005

Laboratory Results

CLIENT: Halcher Service, Inc. Client Project: CSX 10-810
 Work Order: 04100665 Client Sample ID: #2
 Lab ID: 04100665-002 Collection Date: 10/20/04 3:45:00 PM
 Report Date: 01-Nov-04 Matrix: SOLID

Analytes	Certification	RL	Qual	Result	Units	DF	Date Analyzed	Analyst
ASTM D2974								
Percent Moisture		0.1	H	26.4	%	1	10/29/04	JRS
STANDARD METHODS 18TH ED. 2540 G								
Total Solids		0.1	H	73.6	%	1	10/29/04	JRS
SW-846 3550B, 8310, POLYNUCLEAR AROMATIC HYDROCARBONS BY HPLC								
Acenaphthene	NELAP	0.40		ND	mg/Kg-dry	1	10/28/04	TDN
Acenaphthylene		0.40		ND	mg/Kg-dry	1	10/28/04	TDN
Anthracene	NELAP	0.13		ND	mg/Kg-dry	1	10/28/04	TDN
Benzo(a)anthracene	NELAP	0.11		0.18	mg/Kg-dry	1	10/28/04	TDN
Benzo(a)pyrene	NELAP	0.13		0.28	mg/Kg-dry	1	10/28/04	TDN
Benzo(b)fluoranthene	NELAP	0.13		0.14	mg/Kg-dry	1	10/28/04	TDN
Benzo(g,h,i)perylene	NELAP	0.13		0.26	mg/Kg-dry	1	10/29/04	TDN
Benzo(k)fluoranthene	NELAP	0.13		ND	mg/Kg-dry	1	10/28/04	TDN
Chrysene	NELAP	0.13		0.33	mg/Kg-dry	1	10/28/04	TDN
Di benzo(a,h)anthracene	NELAP	0.13		ND	mg/Kg-dry	1	10/29/04	TDN
Fluoranthene	NELAP	0.27		0.71	mg/Kg-dry	1	10/28/04	TDN
Fluorene	NELAP	0.13		ND	mg/Kg-dry	1	10/28/04	TDN
Indeno(1,2,3-cd)pyrene	NELAP	0.13		ND	mg/Kg-dry	1	10/28/04	TDN
Naphthalene	NELAP	0.53		0.82	mg/Kg-dry	1	10/28/04	TDN
Phenanthrene	NELAP	0.13		0.33	mg/Kg-dry	1	10/28/04	TDN
Pyrene	NELAP	0.13		0.53	mg/Kg-dry	1	10/28/04	TDN
Surr: Torphanyl-d14		28.7-171	S	0	%REC	1	10/29/04	TDN
SW-846 5030, 8260B, VOLATILE ORGANIC COMPOUNDS BY GC/MS								
Benzene	NELAP	32.2		ND	ug/Kg-dry	12.5	10/29/04 7:04:00 PM	HLR
Toluene	NELAP	161		ND	ug/Kg-dry	12.5	10/29/04 7:04:00 PM	HLR
Ethylbenzene	NELAP	161		ND	ug/Kg-dry	12.5	10/29/04 7:04:00 PM	HLR
Xylenes, Total	NELAP	161		ND	ug/Kg-dry	12.5	10/29/04 7:04:00 PM	HLR
Surr: 1,2-Dichloroethane-d4		72.8-121		102	%REC	12.5	10/29/04 7:04:00 PM	HLR
Surr: 4-Bromofluorobenzene		75.8-120		86.8	%REC	12.5	10/29/04 7:04:00 PM	HLR
Surr: Dibromofluoromethane		74.1-121		86.3	%REC	12.5	10/29/04 7:04:00 PM	HLR
Surr: Toluene-d8		82.8-112.8		102	%REC	12.5	10/29/04 7:04:00 PM	HLR

TEKLAB, INC.

5445 HORSESHOE LAKE ROAD
COLLINSVILLE, ILLINOIS 62234

ENVIRONMENTAL TESTING LABORATORY

TEL: 618-344-1004
FAX: 618-344-1005

Laboratory Results

CLIENT: Hulcher Service, Inc.
WorkOrder: 04100665
Lab ID: 04100665-003
Report Date: 01-Nov-04

Client Project: CSX 10-610
Client Sample ID: #3
Collection Date: 10/20/04 3:55:00 PM
Matrix: SOLID

Analyses	Certification	RL	Qual	Result	Units	DF	Date Analyzed	Analyst
ASTM D2974								
Percent Moisture		0.1	H	21.0	%	1	10/29/04	JRS
STANDARD METHODS 18TH ED. 2540.G								
Total Solids		0.1	H	78.0	%	1	10/29/04	JRS
SW-846 3550B, 8310. POLYNUCLEAR AROMATIC HYDROCARBONS BY HPLC								
Acenaphthene	NELAP	0.37		0.47	mg/Kg-dry	1	10/28/04	TDN
Benzo(a)anthracene	NELAP	0.089		1.5	mg/Kg-dry	1	10/28/04	TDN
Benzo(a)pyrene	NELAP	0.12		1.2	mg/Kg-dry	1	10/28/04	TDN
Benzo(b)fluoranthene	NELAP	0.12		1.2	mg/Kg-dry	1	10/28/04	TDN
Benzo(g,h,i)perylene	NELAP	0.12		1.2	mg/Kg-dry	1	10/28/04	TDN
Benzo(k)fluoranthene	NELAP	0.12		0.50	mg/Kg-dry	1	10/28/04	TDN
Chrysene	NELAP	0.12		1.4	mg/Kg-dry	1	10/28/04	TDN
Dibenzo(a,h)anthracene	NELAP	0.12		ND	mg/Kg-dry	1	10/28/04	TDN
Fluoranthene	NELAP	0.25		2.1	mg/Kg-dry	1	10/28/04	TDN
Fluorene	NELAP	0.12		ND	mg/Kg-dry	1	10/28/04	TDN
Indeno(1,2,3-cd)pyrene	NELAP	0.12		0.66	mg/Kg-dry	1	10/28/04	TDN
Naphthalene	NELAP	0.49		ND	mg/Kg-dry	1	10/28/04	TDN
Phenanthrene	NELAP	0.12		0.82	mg/Kg-dry	1	10/28/04	TDN
Pyrene	NELAP	0.12		1.7	mg/Kg-dry	1	10/28/04	TDN
Sum: Terphenyl-414		29.7-171	S	0	%REC	1	10/28/04	TDN
SW-846 3030, 8260B. VOLATILE ORGANIC COMPOUNDS BY GC/MS								
Benzene	NELAP	81.3		ND	ug/Kg-dry	25	10/28/04 7:38:00 PM	HLR
Toluene	NELAP	307		ND	ug/Kg-dry	25	10/28/04 7:38:00 PM	HLR
Ethylbenzene	NELAP	307		ND	ug/Kg-dry	25	10/28/04 7:38:00 PM	HLR
Xylenes, Total	NELAP	307		ND	ug/Kg-dry	25	10/28/04 7:38:00 PM	HLR
Sum: 1,2-Dichloroethane-d4		72.8-122		102	%REC	25	10/28/04 7:38:00 PM	HLR
Sum: 4-Bromofluorobenzene		75.6-120		87.7	%REC	25	10/28/04 7:38:00 PM	HLR
Sum: Dibromofluoromethane		74.1-121		96.4	%REC	25	10/28/04 7:38:00 PM	HLR
Sum: Toluene-d8		82.8-112.8		104	%REC	25	10/28/04 7:38:00 PM	HLR

TEKLAB, INC.

5445 HORSESHOE LAKE ROAD
COLLINSVILLE, ILLINOIS 62234

ENVIRONMENTAL TESTING LABORATORY

TEL: 618-344-1004
FAX: 618-344-1005

Laboratory Results

CLIENT: Hatcher Service, Inc.
Work Order: 04100665
Lab ID: 04100665-004
Report Date: 01-Nov-04

Client Project: CSX 100810
Client Sample ID: #4
Collection Date: 10/20/04 4:04:00 PM
Matrix: SOLID

Analytes	Certification	RL	Qual	Result	Units	DV	Date Analyzed	Analyst
ASTM D2974								
Percent Moisture		0.1	H	33.0	%	1	10/29/04	JRS
STANDARD METHODS 18TH ED. 2540 G								
Total Solids		0.1	H	67.0	%	1	10/28/04	JRS
SW-846 2550B, B310. POLYNUCLEAR AROMATIC HYDROCARBONS BY HPLC								
Acenaphthene	NELAP	0.64		1.1	mg/Kg-dry	1	10/28/04	TDN
Acenaphthylene		0.64		ND	mg/Kg-dry	1	10/28/04	TDN
Anthracene	NELAP	0.21		ND	mg/Kg-dry	1	10/28/04	TDN
Benzo(a)anthracene	NELAP	0.17		1.8	mg/Kg-dry	1	10/28/04	TDN
Benzo(a)pyrene	NELAP	0.21		3.2	mg/Kg-dry	1	10/28/04	TDN
Benzo(b)fluoranthene	NELAP	0.21		3.3	mg/Kg-dry	1	10/28/04	TDN
Benzo(g,h,i)perylene	NELAP	0.21		3.0	mg/Kg-dry	1	10/28/04	TDN
Benzo(k)fluoranthene	NELAP	0.21		1.4	mg/Kg-dry	1	10/28/04	TDN
Chrysene	NELAP	0.21		2.3	mg/Kg-dry	1	10/28/04	TDN
Dibenzo(a,h)anthracene	NELAP	0.21		ND	mg/Kg-dry	1	10/28/04	TDN
Fluoranthene	NELAP	0.42		2.3	mg/Kg-dry	1	10/28/04	TDN
Fluorene	NELAP	0.21		ND	mg/Kg-dry	1	10/28/04	TDN
Indeno(1,2,3-cd)pyrene	NELAP	0.21		2.0	mg/Kg-dry	1	10/28/04	TDN
Naphthalene	NELAP	0.86		2.3	mg/Kg-dry	1	10/28/04	TDN
Phenanthrene	NELAP	0.21		1.8	mg/Kg-dry	1	10/28/04	TDN
Pyrene	NELAP	0.21		2.4	mg/Kg-dry	1	10/28/04	TDN
Sum: Terphenyl-d14		20.7-171	S	0	%REC	1	10/28/04	TDN
SW-846 2550B, 8260B. VOLATILE ORGANIC COMPOUNDS BY GC/MS								
Benzene	NELAP	1.0		2.5	ug/Kg-dry	1	10/31/04 5:32:00 AM	HLR
Toluene	NELAP	0.1	J	ND	ug/Kg-dry	1	10/31/04 5:32:00 AM	HLR
Ethylbenzene	NELAP	0.1		ND	ug/Kg-dry	1	10/31/04 5:32:00 AM	HLR
Xylenes, Total	NELAP	0.1	J	ND	ug/Kg-dry	1	10/31/04 5:32:00 AM	HLR
Sum: 1,2-Dichloroethane-d4		72.8-122		110	%REC	1	10/31/04 5:32:00 AM	HLR
Sum: 4-Bromofluorobenzene		75.6-120	S	72.7	%REC	1	10/31/04 5:32:00 AM	HLR
Sum: Dibromofluoromethane		74.1-121		111	%REC	1	10/31/04 5:32:00 AM	HLR
Sum: Toluene-d8		82.8-112.0		85.2	%REC	1	10/31/04 5:32:00 AM	HLR

TEKLAB, INC.

5445 HORSESHOE LAKE ROAD
COLLINSVILLE, ILLINOIS 62234

ENVIRONMENTAL TESTING LABORATORY

TEL: 618-344-1004
FAX: 618-344-1005

Laboratory Results

CLIENT: Hulcher Service, Inc.
WorkOrder: 04100665
Lab ID: 04100665-005
Report Date: 01-Nov-04

Client Project: CSX 106810
Client Sample ID: #5
Collection Date: 10/20/04 4:15:00 PM
Matrix: SOLID

Analyses	Certification	RL	Qual	Result	Units	DF	Date Analyzed	Analyst
ASTM D2874								
Percent Moisture		0.1	H	28.8	%	1	10/28/04	JRS
STANDARD METHODS 18TH ED. 2540 G								
Total Solids		0.1	H	71.2	%	1	10/28/04	JRS
SW-846 3550B, 8310, POLYNUCLEAR AROMATIC HYDROCARBONS BY HPLC								
Acenaphthene	NELAP	0.82		ND	mg/Kg-dry	1	10/28/04	TDN
Acenaphthylene		0.82		ND	mg/Kg-dry	1	10/28/04	TDN
Anthracene	NELAP	0.21		ND	mg/Kg-dry	1	10/28/04	TDN
Benzo(a)anthracene	NELAP	0.16		1.0	mg/Kg-dry	1	10/28/04	TDN
Benzo(a)pyrene	NELAP	0.21		1.1	mg/Kg-dry	1	10/28/04	TDN
Benzo(b)fluoranthene	NELAP	0.21		1.1	mg/Kg-dry	1	10/28/04	TDN
Benzo(g,h,i)perylene	NELAP	0.21		1.1	mg/Kg-dry	1	10/28/04	TDN
Benzo(k)fluoranthene	NELAP	0.21		6.43	mg/Kg-dry	1	10/28/04	TDN
Chrysene	NELAP	0.21		1.1	mg/Kg-dry	1	10/28/04	TDN
Dibenzo(a,h)anthracene	NELAP	0.21		ND	mg/Kg-dry	1	10/28/04	TDN
Fluoranthene	NELAP	0.41		2.3	mg/Kg-dry	1	10/28/04	TDN
Fluorene	NELAP	0.21		ND	mg/Kg-dry	1	10/28/04	TDN
Indeno(1,2,3-cd)pyrene	NELAP	0.21		8.98	mg/Kg-dry	1	10/28/04	TDN
Naphthalene	NELAP	0.82		ND	mg/Kg-dry	1	10/28/04	TDN
Phenanthrene	NELAP	0.21		1.3	mg/Kg-dry	1	10/28/04	TDN
Pyrene	NELAP	0.21		1.4	mg/Kg-dry	1	10/28/04	TDN
Surr: Terphenyl-d14		28.7-171	S	0	%REC	1	10/28/04	TDN
SW-846 5030, 8260B, VOLATILE ORGANIC COMPOUNDS BY GC/MS								
Benzene	NELAP	128		ND	ug/Kg-dry	50	10/30/04 12:49:00 AM	HLR
Toluene	NELAP	843		ND	ug/Kg-dry	50	10/30/04 12:49:00 AM	HLR
Ethylbenzene	NELAP	843		ND	ug/Kg-dry	50	10/30/04 12:49:00 AM	HLR
Xylenes, Total	NELAP	843		ND	ug/Kg-dry	50	10/30/04 12:49:00 AM	HLR
Surr: 1,2-Dichloroethane-d4		72.8-122		108	%REC	50	10/30/04 12:49:00 AM	HLR
Surr: 4-Bromofluorobenzene		75.6-120		100	%REC	50	10/30/04 12:49:00 AM	HLR
Surr: Dibromofluoromethane		74.1-121		87.7	%REC	50	10/30/04 12:49:00 AM	HLR
Surr: Toluene-d8		82.8-112.8		103	%REC	50	10/30/04 12:49:00 AM	HLR

TEKLAB, INC.

5445 HORSESHOE LAKE ROAD
COLLINSVILLE, ILLINOIS 62234

ENVIRONMENTAL TESTING LABORATORY

TEL: 618-344-1004
FAX: 618-344-1005

Laboratory Results

CLIENT: Hulcher Service, Inc.
WorkOrder: 04100665
Lab ID: 04100665-006
Report Date: 01-Nov-04

Client Project: CSX 104810
Client Sample ID: #6
Collection Date: 10/20/04 4:21:00 PM
Matrix: SOLID

Analyses	Certification	RL	Qual	Result	Units	DF	Date Analyzed	Analyst
ASTM D2874								
Percent Moisture		0.1	H	31.7	%	1	10/28/04	JRS
STANDARD METHODS 10TH ED. 2540 G								
Total Solids		0.1	H	68.3	%	1	10/28/04	JRS
SW-846 3550B, 8310, POLYNUCLEAR AROMATIC HYDROCARBONS BY HPLC								
Acenaphthene	NELAP	0.02		ND	mg/Kg-dry	1	10/28/04	TDN
Acenaphthylene		0.02		ND	mg/Kg-dry	1	10/28/04	TDN
Anthracene	NELAP	0.21		ND	mg/Kg-dry	1	10/28/04	TDN
Benzo(a)anthracene	NELAP	0.16		0.31	mg/Kg-dry	1	10/28/04	TDN
Benzo(a)pyrene	NELAP	0.21		0.46	mg/Kg-dry	1	10/28/04	TDN
Benzo(b)fluoranthene	NELAP	0.21		0.56	mg/Kg-dry	1	10/28/04	TDN
Benzo(g,h,i)perylene	NELAP	0.21		0.87	mg/Kg-dry	1	10/28/04	TDN
Benzo(k)fluoranthene	NELAP	0.21		0.25	mg/Kg-dry	1	10/28/04	TDN
Chrysene	NELAP	0.21		0.47	mg/Kg-dry	1	10/28/04	TDN
Dibenzo(a,h)anthracene	NELAP	0.21		ND	mg/Kg-dry	1	10/28/04	TDN
Fluoranthene	NELAP	0.41		0.48	mg/Kg-dry	1	10/28/04	TDN
Fluorene	NELAP	0.21		ND	mg/Kg-dry	1	10/28/04	TDN
Indeno(1,2,3-cd)pyrene	NELAP	0.21		0.43	mg/Kg-dry	1	10/28/04	TDN
Naphthalene	NELAP	0.02		ND	mg/Kg-dry	1	10/28/04	TDN
Phenanthrene	NELAP	0.21		0.39	mg/Kg-dry	1	10/28/04	TDN
Pyrene	NELAP	0.21		0.63	mg/Kg-dry	1	10/28/04	TDN
Sum: Terphenyl-d14		29.7-171	S	0	%REC	1	10/28/04	TDN
SW-846 5030, 8260B, VOLATILE ORGANIC COMPOUNDS BY GC/MS								
Benzene	NELAP	32.4		ND	µg/Kg-dry	12.5	10/30/04 1:21:00 AM	HLR
Toluene	NELAP	162		ND	µg/Kg-dry	12.5	10/30/04 1:21:00 AM	HLR
Ethylbenzene	NELAP	162		ND	µg/Kg-dry	12.5	10/30/04 1:21:00 AM	HLR
Xylenes, Total	NELAP	162		ND	µg/Kg-dry	12.5	10/30/04 1:21:00 AM	HLR
Sum: 1,2-Dichloroethane-d4		72.8-122		107	%REC	12.5	10/30/04 1:21:00 AM	HLR
Sum: 4-Bromofluorobenzene		75.6-120		88.1	%REC	12.5	10/30/04 1:21:00 AM	HLR
Sum: Dibromofluoromethane		74.1-121		88.1	%REC	12.5	10/30/04 1:21:00 AM	HLR
Sum: Toluene-d8		82.0-112.8		104	%REC	12.5	10/30/04 1:21:00 AM	HLR

IL ELAP and NELAP Accredited - Accreditation #100226

IDPH Registry #17584

Page 8 of 9

TEKLAB, INC.

5445 HORSESHOE LAKE ROAD
COLLINGSVILLE, ILLINOIS 62234

ENVIRONMENTAL TESTING LABORATORY

TEL: 618-344-1004
FAX: 618-344-1005

Laboratory Results

CLIENT: Hatcher Service, Inc.
Work Order: 04100665
Lab ID: 04100665-007
Report Date: 01-Nov-04

Client Project: CSX 10 810
Client Sample ID: #7
Collection Date: 10/27/04 2:45:00 PM
Matrix: SOLID

Analysis	Certification	RL	Qual	Result	Units	DF	Date Analyzed	Analyst
ASTM D2974								
Percent Moisture		0.1		17.7	%	1	10/28/04	JRS
STANDARD METHODS 18TH ED. 2540 G								
Total Solids		0.1		82.3	%	1	10/28/04	JRS
SW-846 3550B, 8310. POLYNUCLEAR AROMATIC HYDROCARBONS BY HPLC								
Acenaphthene	NELAP	0.38		0.43	mg/Kg-dry	1	10/28/04	TDN
Acenaphthylene		0.36		ND	mg/Kg-dry	1	10/28/04	TDN
Anthracene	NELAP	0.12		ND	mg/Kg-dry	1	10/28/04	TDN
Benzo(a)anthracene	NELAP	0.096		1.6	mg/Kg-dry	1	10/28/04	TDN
Benzo(b)pyrene	NELAP	0.12		1.9	mg/Kg-dry	1	10/28/04	TDN
Benzo(b)fluoranthene	NELAP	0.12		2.1	mg/Kg-dry	1	10/28/04	TDN
Benzo(g,h,i)perylene	NELAP	0.12		2.0	mg/Kg-dry	1	10/28/04	TDN
Benzo(k)fluoranthene	NELAP	0.12		0.84	mg/Kg-dry	1	10/28/04	TDN
Chrysene	NELAP	0.12		1.8	mg/Kg-dry	1	10/28/04	TDN
Dibenz(a,h)anthracene	NELAP	0.12		ND	mg/Kg-dry	1	10/28/04	TDN
Fluorene	NELAP	0.24		1.8	mg/Kg-dry	1	10/28/04	TDN
Fluorene	NELAP	0.12		ND	mg/Kg-dry	1	10/28/04	TDN
Indeno(1,2,3-cd)pyrene	NELAP	0.12		1.4	mg/Kg-dry	1	10/28/04	TDN
Naphthalene	NELAP	0.48		1.8	mg/Kg-dry	1	10/28/04	TDN
Phenanthrene	NELAP	0.12		1.4	mg/Kg-dry	1	10/28/04	TDN
Pyrene	NELAP	0.12		1.5	mg/Kg-dry	1	10/28/04	TDN
Sum: Terphenyl-d14		28.7-171	S	0	%REC	1	10/28/04	TDN
SW-846 5038, 8260B. VOLATILE ORGANIC COMPOUNDS BY GC/MS								
Benzene	NELAP	1.2	J	ND	ug/Kg-dry	1	10/31/04 8:04:00 AM	HLR
Toluene	NELAP	6.0		ND	ug/Kg-dry	1	10/31/04 8:04:00 AM	HLR
Ethylbenzene	NELAP	6.0		ND	ug/Kg-dry	1	10/31/04 8:04:00 AM	HLR
Xylenes, Total	NELAP	6.0		ND	ug/Kg-dry	1	10/31/04 8:04:00 AM	HLR
Sum: 1,2-Dichlorobenzene-d4		72.8-122		115	%REC	1	10/31/04 8:04:00 AM	HLR
Sum: 4-Bromofluorobenzene		75.6-120	S	72.5	%REC	1	10/31/04 8:04:00 AM	HLR
Sum: Dibromofluoromethane		74.1-121		108	%REC	1	10/31/04 8:04:00 AM	HLR
Sum: Toluene-d8		82.8-112.8		94.7	%REC	1	10/31/04 8:04:00 AM	HLR

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

BUREAU OF LAND / FIELD OPERATIONS SECTION

RCRA INSPECTION REPORT

GENERAL FACILITY INFORMATION

USEPA ID #:	ILD000665505	IEPA ID #:	1630450024		
Facility Name:	CSX Transportation Inc.	Phone #:	904/359-4800		
Location	3900 Rose Lake Rd	County:	St. Clair		
City:	East St. Louis	State:	IL	Zip Code:	62201
Region:	Collinsville	Inspection Date:	12/30/2004	Time:	1:00 PM
Weather:	sunny, dry, 80 degrees				

TYPE OF FACILITY

Notified As:	G-1	Regulated As:	
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TYPE OF INSPECTION

CEI:	<input type="checkbox"/>	CME/O&M:	<input type="checkbox"/>	CSI:	<input type="checkbox"/>	NRR:	<input checked="" type="checkbox"/>	CCI:	<input type="checkbox"/>	PIF:	<input type="checkbox"/>	CVI:	<input type="checkbox"/>	CSE:	<input type="checkbox"/>	CAO:	<input type="checkbox"/>
FUI to:	Other:																

NOTIFICATION INFORMATION (EPA 8700-12)

Notification Date:	(initial)	(subsequent)
--------------------	-----------	--------------

PART A PERMIT INFORMATION (EPA 3510-3 OR EPA 8700-23)

Part A Date:	Amended:	Withdrawn:
--------------	----------	------------

PART B PERMIT INFORMATION

(Check one if applicable) Application Submitted?	<input type="checkbox"/>	Permit Issued?	<input type="checkbox"/>	Date:
--	--------------------------	----------------	--------------------------	-------

ACTIVE ENFORCEMENT

Date facility referred to:	USEPA:	IAGO:	County State's Attorney:
----------------------------	--------	-------	--------------------------

ACTIVE ENFORCEMENT ORDERS

CACO:	CAFO:	Federal Court Order:
Consent Decree:	IPCB Order:	State Court Order:



TSD FACILITY ACTIVITY SUMMARY

Activity by Process Code	On Part A?	On Part B?	Activity ever done?	Closed?	Being done during inspection?	Exempt per 35 IAC Sec:	On Annual Report:		
	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				

OWNER

OPERATOR

Name: New York Central Lines	Name: CSX Transportation Inc.
Address: 2001 Market St. 6A	Address: 500 Water St. J340
City: Philadelphia	City: Jacksonville
State: PA Zip Code: 19103	State: IL Zip Code: 32202
Phone #: 215/209-2000	Phone #: 618/482-2656

PERSON(S) INTERVIEWED

TITLE

PHONE

N/A		

INSPECTION PARTICIPANTS

AGENCY/BUREAU

PHONE

Kathy Vieregge	IEPA/BOL	618/346-5120

*Report prepared by this person.

SUMMARY OF APPARENT VIOLATIONS

AREA	SECTION	X
	12(a)	<input checked="" type="checkbox"/>
	12(d)	<input checked="" type="checkbox"/>
	12(f)	<input checked="" type="checkbox"/>
	21(a)	<input checked="" type="checkbox"/>
	21(e)	<input checked="" type="checkbox"/>
		<input type="checkbox"/>
		<input type="checkbox"/>
		<input type="checkbox"/>

AREA	SECTION	X
		<input type="checkbox"/>

AREA	SECTION	X
		<input type="checkbox"/>

X = CONTINUING VIOLATIONS



TO: BOL FILE

DATE: December 30, 2004

FROM: Kathy Vieregge, SSU - Collinsville

SUBJECT: Non-Financial Records Review

RE: LPC #1630450024 – St. Clair County
East St. Louis/CSX Transportation Inc.
IEMA #20040957
Compliance File

Documents Reviewed: IEMA Incident Report dated 7/9/04; IEPA photos 7/12/04; IEPA letter to CSX Railroad dated 5/5/04; Memo to EOU File dated 9/29/04; Letter from Hulcher Services Inc. Dated 9/29/04; IEPA letter to CSX dated 10/11/04; Analytical data fax from Hulcher Services Inc. Dated 12/16/04.

Reviewed by: Kathy Vieregge, FOS – Collinsville Region

Review Notes:

- IEMA incident report notes that a leak or spill occurred on 7/8/04 (discovered 7/9/04). The amount released is reported as 400 - 500 gallons of diesel fuel.
- 9/29/04 Memo to EOU File – Springfield notes that soil would be excavated and O/O was instructed to analyze samples for BTEX and PNAs.
- Analytical data faxed from Hulcher Services on 12/16/04
 - Seven soil samples were collected on 10/20/04 and analyzed for BTEX and PNAs.
 - Results were compared to 35 IAC Part 742 Tier 1 Soil Remediation Objectives for Industrial/Commercial Properties and Background Carcinogenic PAH 95th Percentile Concentrations.
 - Sample #4 exceeds Background Concentrations:
 - Benzo(a)pyrene Result- 3.2 mg/kg Background – 2.1 mg/kg
 - Benzo(b)fluoranthene Result-3.3 mg/kg Background – 2.0 mg/kg
 - Indeno(1,2,3-cd)pyrene Result-2.0 mg/kg Background-1.6 mg/kg
 - Sample #7 exceeds Background Concentrations:
 - Benzo(b)fluoranthene Result-2.1 mg/kg Background-2.0 mg/kg

Review Summary:

Confirmation soil samples #4 and 7 exceed Background Carcinogenic PAH Concentrations applicable for St. Clair County. Additional remediation work is required to properly complete and document the cleanup.



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276, 217-782-3397
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601, 312-814-6026

ROD R. BLAGOJEVICH, GOVERNOR

RENEE CIPRIANO, DIRECTOR

CERTIFIED MAIL 70022410000554788601
RETURN RECEIPT REQUESTED

January 3, 2005

Mr. David Haggerman
CSX Railroad
3900 Roselake Road
East St. Louis, IL 62201

Mr. Joseph W. Tupa
Manager, Hazardous Material Field Services
CSXT
1700 West 167th Street
Calumet City, IL 60409

Re: **VIOLATION NOTICE, L-2005-01001**
Release Incident: 20040651
1630450024/CSX Transportation Inc.
East St. Louis/St. Clair County
Date Release Occurred: 7/8/04
Date Release Reported: 7/9/04

Dear Mr. Haggerman:

This constitutes a Violation Notice pursuant to Section 31(a)(1) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(a)(1), and is based upon review of available information about the above referenced spill and release of petroleum product from your facility located in East St. Louis.

The Illinois EPA hereby provides notice of violations of environmental statutes, regulations or permits as set forth in the Attachment to this letter. The Attachment includes an explanation of the activities that Illinois EPA believes may resolve the specified violations, including an estimate of a reasonable time period for completion of the necessary activities. However, due to the nature and seriousness of the violations cited in the Attachment, please be advised that resolution of the violations may require the involvement of a prosecutorial authority for purposes that may include, among others, the imposition of statutory penalties.

RECEIVED
Division of Legal Counsel
OCT 31 2005

EXHIBIT
6

ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 987-7760 • DES PLAINES - 951 North Main Street, Des Plaines, IL 60016 - (847) 294-4000
ELGIN - 595 South State, Elgin, IL 60123 - (847) 608-3131 • PEORIA - 5415 N. University St., Peoria, IL 61604 - (309) 693-5463
BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5462 • CHAMPAIGN - 2125 South First Street, Champaign, IL 61820 - (217) 278-5800
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 786-6892 • COLLINSVILLE - 2009 Mall Street, Collinsville, IL 62234 - (618) 346-5120
MARION - 2309 W. Main St., Suite 116, Marion, IL 62959 - (618) 993-7200

VIOLATION NOTICE, L-2005-01001

Page 2

Release Incident: 20040651

1630450024/CSX Transportation Inc.

East St. Louis/St. Clair County

Date Release Occurred: 7/8/04

Date Release Reported: 7/9/04

A written response to this Violation Notice, which may include a request for a meeting with representatives of the Illinois EPA, must be submitted via certified mail to the Illinois EPA within 45 days of receipt of this letter. The response must address each violation specified in the Attachment and include for each an explanation of the activities that will be implemented and the time schedule for the completion of that activity. The written response will constitute a proposed Compliance Commitment Agreement ("CCA") pursuant to Section 31 of the Act. The Illinois EPA will review the proposed CCA and will accept or reject it within 30 days of receipt. If a timely written response to this Violation Notice is not provided, it shall be considered a waiver of the opportunity to respond and to meet, and the Illinois EPA may proceed with a referral to a prosecutorial authority.

On October 11, 2004 I sent you a letter requesting that you enroll this site in the SRP - Voluntary Program. No response to that letter has been received.

All technical and written communications should be directed to me.

Sincerely,



Chris N. Cahnovsky, Regional Manager
Field Operations Section
Bureau of Land

CNC:KAV:pbo

bc: ~~BOL - Division File~~

bc: BOL - Collinsville

ATTACHMENT A

I. Description of Violations

CSX Transportation Inc. is in apparent violation of the Illinois Environmental Protection Act because it caused or allowed a release of petroleum products to soil, subsurface strata and potentially groundwater.

Although we have received correspondence dated December 16, 2004 describing certain activities that were taken to attempt to respond to the release, the company has not provided Illinois EPA with sufficient information to confirm that the cleanup of all residual material has been completed.

According to the information provided, residual contamination may remain in the soils, and/or subsurface strata constituting a continuing source of further releases to groundwater or waters of the State.

Releases and threats of releases of contaminants to groundwater constitute violations of Section 12 (a) of the Act, which prohibit causing or allowing water pollution or creating a water pollution hazard. Releases and threats of releases of contaminants to soil, and potentially groundwater constitute violations of Section 12 (a) and 12(d) of the Act, which prohibit causing or allowing water pollution or creating a water pollution hazard. Under Sections 12 (a) and 12(f) of the Act, no person shall discharge contaminants into waters of the State without obtaining appropriate permits. Releases to soil and ground surface may also constitute violations of Section 21 (a) of the Act, which prohibits open dumping. Section 21 (e) does not allow disposal, treatment, storage or abandonment, except at a site or facility, which meets the requirements of the Act and of regulations and standards thereunder. Sections 12 (a), 12 (d), and 35 Ill. Adm. Code 620.115 and 620.301(a) prohibit the release of any contaminants to a resource groundwater.

Section 12 (a)

No person shall 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.

Section 12 (d)

No person shall deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.

Section 12 (f)

No person shall cause, threaten or allow the discharge of any contaminant into the waters of the State, including but not limited to waters of any sewage works, or into any well or from any point source within the State, without an NPDES permit for point source discharges issued by the Illinois EPA.

Section 21 (a)

No person shall cause or allow the open dumping of any waste.

Section 21 (e)

No person shall dispose, treat, store or abandon any waste, or transport any wastes into this State of disposal, treatment, storage or abandonment, except at a site or facility, which meets the requirements of this Act and of regulations and standards thereunder.

SUGGESTED RESOLUTION

- A. Enter this site into the Agency's Site Remediation Program so the Agency can review and approve the remediation work that needs to be done to properly complete and document the cleanup.

---- or -----

- B. The Illinois EPA recommends that all the activities described below be submitted as part of a proposed Compliance Commitment Agreement relative to the release cited herein. An estimated schedule must be provided for completion of each activity. We expect that activities 1 and 2 (an investigation into cause of the release and a focused site investigation) can reasonably be completed and appropriate reports submitted to the Illinois EPA within forty-five (45) days of your receipt of this Violation Notice. The Illinois EPA recognizes that the schedule for activities 3 through 5 will be dependent on the results of activities 1 and 2, and that adjustments to the time schedule proposed for activities 3 through 5 may be appropriate at a later date.

1. Conduct a thorough investigation by knowledgeable personnel into the cause or causes of the release and how such releases can be prevented or precluded in the future. This investigation may be conducted in accordance with the enclosed "Compliance Documentation Guide I - Criteria for Investigation of Causal Factors and Development of Preventive Responses ("Guide I"), which is provided for your convenience.

Illinois EPA recommends that a comprehensive report of that investigation and recommended corrective actions be submitted within forty-five (45) days of your receipt of this Violation Notice.

2. Conduct a focused site investigation at the emergency incident site with respect to the material released and any other material or conditions that affect the mobility and enhance the toxicity of the material released. The site investigation may address the criteria cited in the enclosed "Compliance Documentation Guide B - Criteria for focused Site Investigation and Remedial Action Plan at Emergency Incident Sites ("Guide B"), which is provided for your convenience.

Illinois EPA recommends that an investigation report be prepared for the site in accordance with Guide B and be submitted within forty-five (45) days of your receipt of this Violation Notice.

3. Determine remediation objectives in accordance with Guide B and the documents and regulations cited therein. A remediation objectives report should be prepared in accordance with Guide B and submitted for review. A proposed date for submission of this report must be included.
4. Prepare a remedial action plan in accordance with Guide B to address contamination at locations where the contamination concentration exceeds the remediation objectives, which have been approved by the Agency for the incident location. The remedial action plan should be submitted to the Agency for review in advance of implementation. The remedial action plan should also contain an implementation schedule. The Agency may agree in writing to amendments to portions of the schedule if conditions during implementation justify this. [Note: If remedial action is expected to exceed three months, the plan should include a schedule for detailed quarterly reports of progress. The content of such reports should be proposed in the remedial action plan.]
5. Prepare a remedial action completion report at the completion of the accepted remedial action plan. The remedial action completion report should be submitted to the Agency by the date proposed in the accepted remedial action plan. The remedial action completion report may be prepared in accordance with "Compliance Documentation Guide C – Criteria for Remedial Action Report at Emergency Incident Sites ("Guide C")", which is provided for your convenience.



State of Illinois
 ENVIRONMENTAL PROTECTION AGENCY

MEMORANDUM

DATE: January 3, 2005
 TO: BOL Division File
 FROM: Collinsville Region
 SUBJECT: Certified Mail Green Card Receipt for:
 LPC # 1630450024
 East St. Louis/CSX Transportation, Inc.
 Compliance File
 Certified #70022410000554788601
 For Letter dated: January 3, 2005

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JAN 07 2005

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Sent To **CSX Railroad - David Haggerman**
 Street, Apt. No.,
 or PO Box No. **3900 Roselake Road**
 City, State, ZIP+4 **East St. Louis, IL 62201**

PS Form 3800, June 2002 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:
 Mr. David Haggerman
 CSX Railroad
 3900 Roselake Road
 East St. Louis, IL 62201

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 David Haggerman Addressee
 B. Received by (Printed Name) **DAVID HAGGERMAN** C. Date of Delivery **1-5-05**
 D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below. No

JAN - 6 2005
COLLINSVILLE OFFICE

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

Article Number (Transfer from service label) **7002 2410 0005 5478 8601**

Certified Mail Provides:

PS Form 3800, June 2002 (Reverse)
102585-02-M-1892

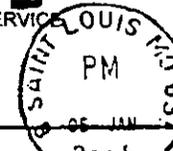
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- NO INSURANCE COVERAGE IS PROVIDED with Certified Mail. For valuables, please consider Insured or Registered Mail.
- For an additional fee, a *Return Receipt* may be requested to provide proof of delivery. To obtain Return Receipt service, please complete and attach a Return Receipt (PS Form 3811) to the article and add applicable postage to cover the fee. Endorse mailpiece "Return Receipt Requested". To receive a fee waiver for a duplicate return receipt, a USPS® postmark on your Certified Mail receipt is required.
- For an additional fee, delivery may be restricted to the addressee or addressee's authorized agent. Advise the clerk or mark the mailpiece with the endorsement "Restricted Delivery".
- If a postmark on the Certified Mail receipt is desired, please present the article at the post office for postmarking. If a postmark on the Certified Mail receipt is not needed, detach and affix label with postage and mail.

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BOL
ENVIRONMENTAL PROTECTION AGENCY
2009 MALL STREET
COLLINSVILLE, ILLINOIS 62234

62234+1832





State of Illinois
 ENVIRONMENTAL PROTECTION AGENCY

MEMORANDUM

DATE: January 3, 2005
 TO: BOL Division File
 FROM: Collinsville Region
 SUBJECT: Certified Mail Green Card Receipt for:
 LPC # 1630450024
 East St. Louis/CSX Transportation, Inc.
 Compliance File

Certified #70022410000554788595
 For Heretofore (January 3, 2005)

JAN 1 1 2005

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Total Postage & Fees	\$	

Sent To: CSXT - Joseph W. Tupa

Street, Apt. No., or PO Box No.: 1700 West 167th Street

City, State, ZIP+4: Calumet City, IL 60409

PS Form 3800, June 2002. See Reverse for Instructions.

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:
 CSXT
 Joseph W. Tupa
 1700 West 167th Street
 Calumet City, IL 60409

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent Addressee
Michael A. Caspar

B. Received by (Printed Name) C. Date of Delivery
 Michael A. Caspar 1/5/05

D. Is delivery address different from item 1? Yes No
 If YES, enter delivery address below:

CALUMET CITY IL

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

Article Number (Transfer from service label) 7002 2410 0005 5478 8595

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- A unique identifier for your mailpiece
- A record of delivery kept by the Postal Service for two years

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- Certified Mail may **ONLY** be combined with First-Class Mail[®] or Priority Mail[®].
- Certified Mail is *not* available for any class of International mail.
- **NO INSURANCE COVERAGE IS PROVIDED** with Certified Mail. For valuables, please consider Insured or Registered Mail.
- For an additional fee, a *Return Receipt* may be requested to provide proof of delivery. To obtain Return Receipt service, please complete and attach a Return Receipt (PS Form 3811) to the article and add applicable postage to cover the fee. Endorse mailpiece "Return Receipt Requested". To receive a fee waiver for a duplicate return receipt, a USPS[®] postmark on your Certified Mail receipt is required.
- For an additional fee, delivery may be restricted to the addressee or addressee's authorized agent. Advise the clerk or mark the mailpiece with the endorsement "*Restricted Delivery*".
- If a postmark on the Certified Mail receipt is desired, please present the article at the post office for postmarking. If a postmark on the Certified Mail receipt is not needed, detach and affix label with postage and mail.

IMPORTANT: Save this receipt and present it when making an inquiry. Internet access to delivery information is not available on mail addressed to APOs and FPOs.

PS Form 3800, June 2002 (Reverse)
2891-N-22-662201

UNITED STATES POSTAL SERVICE



First-Class Mail[®]
Postage & Fees Paid
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• Sender: Please print your name, address, and ZIP+4 in this box •

BOL
ENVIRONMENTAL PROTECTION AGENCY
2009 MALL STREET
COLLINSVILLE, ILLINOIS 62234

62234+1532





ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276, 217-782-3397
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601, 312-814-6026

ROD R. BLAGOJEVICH, GOVERNOR RENEE CIPRIANO, DIRECTOR

217/782-5544
TDD 217/782-9143

Mr. Joseph Tupa
Manager, Hazardous Material Field Services
CSXT
1700 West 167th St.
Calumet City, IL 60409

CERTIFIED MAIL # 7002 3150 0000 1109 0313
RETURN RECEIPT REQUESTED

Mr. David Haggerman
CSX Railroad
3900 Roselake Road
East St. Louis, IL 62201

CERTIFIED MAIL # 7002 3150 0000 1109 0320
RETURN RECEIPT REQUESTED

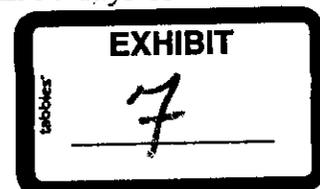
Re: Notice Of Intent To Pursue Legal Action
Violation Notice, L-2005-01001
1630450024 - St. Clair County
Release Incident: 20040651
Compliance File

Dear Mr. Tupa and Mr. Haggerman:

This Notice of Intent to Pursue Legal Action is provided pursuant to Section 31(b) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(b) (2002). The Illinois Environmental Protection Agency ("Illinois EPA") is providing this notice because:

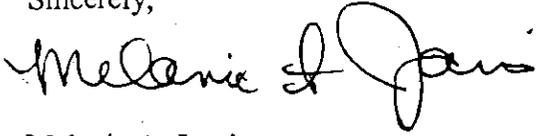
CSX Transportation Inc. has failed to respond to a Violation Notice dated January 3, 2005 and issued by the Illinois EPA within the time frame required by Section 31 of the Act.

The Illinois EPA is providing this notice because it may pursue legal action for the violation(s) of environmental statutes, regulations or permits specified in Attachment A. This Notice of Intent to Pursue Legal Action provides the opportunity to schedule a meeting with representatives of the Illinois EPA to attempt to resolve the violations of the Act, regulations and permits specified in Attachment A. If a meeting is requested, it must be held within 30 days of receipt of this notice unless the Illinois EPA agrees to an extension of time.



If you wish to schedule a meeting with representatives of the Illinois EPA or have any questions, please contact me at 217-782-5544 within 20 days of your receipt of this notice.

Sincerely,

A handwritten signature in cursive script that reads "Melanie A. Jarvis". The signature is written in black ink and is positioned to the left of the typed name.

Melanie A. Jarvis
Assistant Counsel

cc: Brian White
Chris Cahnovsky – BOL Collinsville
Kathy Vieregge, - BOL Collinsville
Mindy Brandt
Meredith Kelley
BOL – Division File

ATTACHMENT A

I. Description of Violations

CSX Transportation Inc. is in apparent violation of the Illinois Environmental Protection Act because it caused or allowed a release of petroleum products to soil, subsurface strata and potentially groundwater.

Although we have received correspondence dated December 16, 2004 describing certain activities that were taken to attempt to respond to the release, the company has not provided Illinois EPA with sufficient information to confirm that the cleanup of all residual material has been completed.

According to the information provided, residual contamination may remain in the soils, and/or subsurface strata constituting a continuing source of further releases to groundwater or waters of the State.

Releases and threats of releases of contaminants to groundwater constitute violations of Section 12 (a) of the Act, which prohibit causing or allowing water pollution or creating a water pollution hazard. Releases and threats of releases of contaminants to soil, and potentially groundwater constitute violations of Section 12 (a) and 12(d) of the Act, which prohibit causing or allowing water pollution or creating a water pollution hazard. Under Sections 12 (a) and 12(f) of the Act, no person shall discharge contaminants into waters of the State without obtaining appropriate permits. Releases to soil and ground surface may also constitute violations of Section 21 (a) of the Act, which prohibits open dumping. Section 21 (e) does not allow disposal, treatment, storage or abandonment, except at a site or facility, which meets the requirements of the Act and of regulations and standards thereunder. Sections 12 (a), 12 (d), and 35 Ill. Adm. Code 620.115 and 620.301(a) prohibit the release of any contaminants to a resource groundwater.

Section 12 (a)

No person shall 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.

Section 12 (d)

No person shall deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.

Section 12 (f)

No person shall cause, threaten or allow the discharge of any contaminant into the waters of the State, including but not limited to waters of any sewage works, or into any well or from any point source within the State, without an NPDES permit for point source discharges issued by the Illinois EPA.

Section 21 (a)

No person shall cause or allow the open dumping of any waste.

Section 21 (e)

No person shall dispose, treat, store or abandon any waste, or transport any wastes into this State of disposal, treatment, storage or abandonment, except at a site or facility, which meets the requirements of this Act and of regulations and standards thereunder.

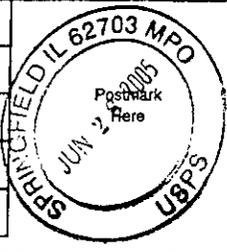
0220 109 0320 0000 1109 0320

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OFFICIAL USE

Postage	\$
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$



Sent To: David Haggeman / CSX Railroad
 Street, Apt. No., or PO Box No.: 3900 Roselake Road
 City, State, ZIP+4: East St. Louis, IL 62201

PS Form 3800, June 2002 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

David Haggeman
 CSX Railroad
 3900 Roselake Road
 East St. Louis, IL 62201

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Walter Guerner Addressee

B. Received by (Printed Name) *Walter Guerner* C. Date of Delivery *6-30-05*

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article # (Transit) 7002 3150 0000 1109 0320

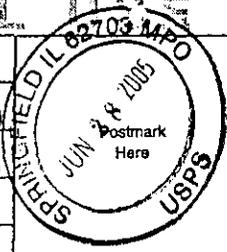
7002 3150 0000 1109 0313

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OFFICIAL MAIL

Postage	\$	
Certified Fee		2.30
Return Receipt Fee (Endorsement Required)		1.75
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	



Sent To
 Joseph Tupa, Manager, Hazardous Material
 Street, Apt. No. or PO Box No. CSXT - 1700 West 167th Street
 City, State, ZIP+4 Calumet City, IL 60409

PS Form 3800, June 2002

See Reverse for Instructions

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p><i>M. Gaspar</i></p> <p>B. Received by (Printed Name) C. Date of Delivery 6/30/05</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below</p>
<p>1. Article Addressed to:</p> <p>Joseph Tupa Manager Hazardous Material Field Services CSXT 1700 West 167th Street Calumet City, IL 60409</p>	<p>3. Service Type</p> <p><input type="checkbox"/> Certified Mail <input checked="" type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>
<p>2. Article # (Transfer) 7002 3150 0000 1109 0313</p>	<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>