

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

Complainant,)

v.)

PCB No. 16-61)

AMSTED RAIL COMPANY, INC.,)
A Delaware Corporation.)

Respondent.)

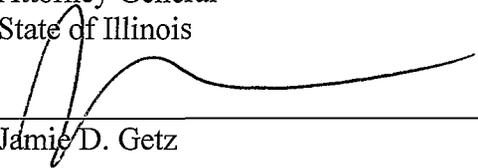
NOTICE OF FILING

TO: Please see attached Service List

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board by electronic filing COMPLAINANT'S RESPONSE TO RESPONDENT AMSTED RAIL COMPANY, INC.'S MOTION FOR LEAVE TO FILE A REPLY AND MOTION FOR LEAVE TO FILE A SURREPLY, a copy of which is attached and hereby served upon you.

Respectfully submitted,

LISA MADIGAN
Attorney General
State of Illinois



Jamie D. Getz

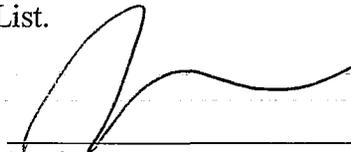
Dated: February 11, 2016

Jamie D. Getz
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THIS FILING IS SUBMITTED ON RECYCLED PAPER

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served via electronic mail on the date of February 11, 2016 the attached NOTICE OF FILING and COMPLAINANT'S RESPONSE TO RESPONDENT AMSTED RAIL COMPANY, INC.'S MOTION FOR LEAVE TO FILE A REPLY AND MOTION FOR LEAVE TO FILE A SURREPLY to the addresses listed on the attached Service List.



Jamie D. Getz
Assistant Attorney General
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(312) 814-6986

Date: February 11, 2016

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
by LISA MADIGAN, Attorney)	
General of the State of Illinois,)	
)	
Complainant,)	
)	
v.)	No. 16-61
)	(Enforcement – Air)
AMSTED RAIL COMPANY, INC.,)	
a Delaware corporation,)	
)	
Respondent.)	

COMPLAINANT’S RESPONSE TO RESPONDENT AMSTED RAIL COMPANY, INC.’S MOTION FOR LEAVE TO FILE A REPLY AND MOTION FOR LEAVE TO FILE A SURREPLY.

NOW COMES Complainant, People of the State of Illinois, by Lisa Madigan, Attorney General of the State of Illinois (“Complainant”), and responds to Amsted Rail Company, Inc.’s (“Respondent”) Motion For Leave to File a Reply (“Motion”) and, if Respondent’s Motion is granted, hereby moves for Leave to File a Surreply. In support of this Response, the Complainant states as follows:

Section 101.500(e) of the Board’s procedural rules, 35 Ill. Adm. Code 101.500(e), only permits the filing of a reply to prevent material prejudice. Respondent’s Motion fails to establish that it will experience material prejudice without leave to file a reply. In support of its Motion, Respondent states that “the Attorney General’s response is devoted to the wrong issue” and that “the cases cited by the Attorney General are irrelevant or distinguishable.” Motion p. 1. That Respondent disagrees with the application of case law as presented by Complainant does not meet the prerequisite that Respondent will suffer “material prejudice”.

Respondent’s proposed reply (*see* Motion, Exhibit A, hereinafter “Reply”) largely restates the arguments made in its initial Motion to Dismiss Counts I through VI of the

Complaint. The Board may deny a motion for leave to reply when the proposed filing solely contains reiterations of the legal arguments previously contained within the initial filing. *See Midwest Generation EME v. Ill. Environ. Protection Agency* (Aug. 18, 2005), PCB 04-216, slip op. at 3. Respondent asserts in its Motion to Dismiss that Counts I through VI are not brought to protect a public interest and therefore are barred by a statute of limitations. Motion to Dismiss at 5. Respondent's Reply simply rehashes, in greater detail, its argument that the Complainant is seeking to enforce some sort of private right or interest. Respondent will not suffer material prejudice if the Board does not permit it to reiterate the same claims from its Motion to Dismiss.

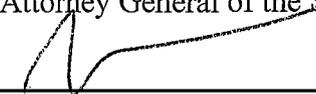
In the alternative, if the Board does grant Respondent's Motion, Complainant hereby moves for leave to file a Surreply to Respondent's Motion to Dismiss (attached hereto as Exhibit A, hereinafter "Surreply"), *instanter*. The Reply contains a prejudicial misstatement that, if Complainant is not provided the opportunity to reply to, could severely prejudice Complainant's case. The Surreply is strictly limited to addressing the misstatement contained in the Reply.

WHEREFORE, Complainant, People of the State of Illinois, respectfully requests that the Board deny Respondent's Motion for Leave to Reply, or, in the alternative, grant Complainant's Motion for Leave to File Surreply and file the attached Surreply, *instanter*.

Respectfully submitted,

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

BY:



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No. 16-61
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**COMPLAINANT’S SURREPLY TO RESPONDENT’S REPLY IN SUPPORT OF ITS
MOTION TO DISMISS COUNTS I, II, III, IV, V, AND VI**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by Lisa Madigan, Attorney General of the State of Illinois, hereby files this Surreply for the purpose of addressing an inaccurate statement made by Respondent, AMSTED RAIL COMPANY, INC., in its Reply in Support of Motion to Dismiss Counts I, II, III, IV, V, and VI (“Reply”).

Respondent states in its Reply that “the complaint does not allege its action is brought pursuant to Section 31. *Reply* p. 5. This is a mischaracterization of the nature of the matter presently before the Illinois Pollution Control Board (“Board”) and ignores the plain language of the Complaint. The Complaint alleges as follows:

“This Complaint is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency (“Illinois EPA” or “Agency”), against Respondent, AMSTED RAIL COMPANY, INC. (“Respondent”), pursuant to Section 31 of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/31 (2014).

Complaint, p. 1, ¶ 1. Section 31 of the Act authorizes the Attorney General to file a formal complaint before the Board when alleged violations remain the subject of disagreement between the Agency and the person complained of. 415 ILCS 5/31(c)(1). Pursuant to that authority,

Complainant filed the Complaint before the Board on November 16, 2015, alleging numerous violations of the Act against the Respondent.

Respondent completely fails to support its assertion that the Complainant does not allege its action is brought pursuant to Section 31 with any facts or citations. Presumably, Respondent presents this assertion to evade the Board's direct holding that "[T]here is no statute of limitations that applies to enforcement actions brought by the State pursuant to Section 31 of the Act." *People of the State of Ill. v. John Crane Inc.* (May 17, 2001), PCB 01-76, slip op. at 5.

Both parties have already had the opportunity, in the Motion and in the Response, to argue whether any statute of limitations may or may not be applicable to the allegations in the Complaint. Respondent may not assert a wholly incorrect and unsupported characterization of the Complaint in an attempt to refute Complainant's presentation of the applicable law. Since this matter was indisputably brought pursuant to Section 31 of the Act, the case law presented by Complainant in its response that demonstrates its claims are not barred by any statute of limitations is applicable.

Respectfully submitted,

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

BY:



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