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DEC 14 2005

STATE OF ILLINOIS
Pollution Control Board

**BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 06-51
) (Enforcement – Air, Water, Land)
CSX TRANSPORTATION, INC.,)
a Virginia corporation,)
)
Respondent.)

NOTICE OF FILING

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

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

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

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

CSX TRANSPORTATION, INC.

By: 

David L. Rieser
One of its Attorneys

DATED: December 14, 2005

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

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ANSWER and
AFFIRMATIVE DEFENSES

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

COUNT I

1. This allegation states a legal conclusion and no further answer is required.
2. This allegation states a legal conclusion and no further answer is required.
3. This allegation states a legal conclusion and no further answer is required.
4. CSXT admits that it is a Virginia corporation but denies all other allegations stated herein.
5. CSXT admits that a derailment occurred on December 22, 2005 near Paris, Illinois, but denies the remaining allegations of Paragraph 5.
6. CSXT admits the allegations of Paragraph 6.
7. CSXT denies the allegations of Paragraph 7 but states that approximately 5,600 gallons of diesel fuel was released from the engines.
8. CSXT admits the allegations of Paragraph 8.
9. CSXT admits the allegations of Paragraph 9.

10. CSXT does not admit or deny the allegations of Paragraph 10 but demands strict proof thereof.
11. CSXT denies the allegations of Paragraph 11 but states that HCl was released to the field adjacent to the tracks.
12. CSXT denies the allegations of Paragraph 12, but states that the City of Paris and the Illinois EPA ordered precautionary evacuations in the surrounding area.
13. CSXT denies the allegations of Paragraph 13 but states that HCl is considered corrosive.
14. This allegation states a legal conclusion and no further answer is required.
15. This allegation states a legal conclusion and no further answer is required.
16. CSXT denies the allegations of Paragraph 16.

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

COUNT II

- 1 – 14. CSX restates and incorporates by references its answers to Paragraphs 1 – 14 of Count I as Paragraphs 1 – 14 of this Count II as though fully stated herein.
15. This allegation states a legal conclusion and no answer is required.
 16. This allegation states a legal conclusion and no answer is required.
 17. CSX denies the allegations of Paragraph 17.
 18. CSX denies the allegations of Paragraph 18.
 19. CSX denies the allegations of Paragraph 19.

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

COUNT III

- 1 – 14. CSX restates and incorporates by references its answers to Paragraphs 1 – 14 of Count I as Paragraphs 1 – 14 of this Count III as though fully stated herein.
15. This allegation states a legal conclusion and no answer is required.
16. This allegation states a legal conclusion and no answer is required.
17. This allegation states a legal conclusion and no answer is required.
18. CSX denies the allegations of Paragraph 18.
19. CSX admits the allegations of Paragraph 19.
20. This allegation states a legal conclusion and no answer is required.
21. CSX denies the allegations of Paragraph 21.
22. CSX denies the allegations of Paragraph 22.

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

AFFIRMATIVE DEFENSES

1. Plaintiff fails to state a claim on which relief can be granted.
2. Plaintiff failed to comply with the requirements of Section 31 of the Illinois Environmental Protection Act.
3. The Board has no jurisdiction to hear actions or issue injunctions pursuant to Section 43 of the Illinois Environmental Protection Act.
4. Even if the Board had such jurisdiction, no action can be brought pursuant to Section 43 since no current emergency is alleged.

5. The Board has no basis to issue an order CSXT to “cease and desist” since the releases alleged in the complaint have been addressed through a Compliance Commitment Agreement presented to the Illinois Environmental Protection Agency.

6. The Board has no jurisdiction to penalize CSXT with regard to the derailment.

7. The Board has no basis to award attorneys fees, since the Attorney General has not alleged (and cannot allege) that the violations stated in the complaint were the result of “willful, knowing or repeated violations” of the Illinois Environmental Protection Act as required pursuant to Section 42(f).

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

Respectfully submitted,

CSX TRANSPORTATION, INC.

By: 

David L. Rieser
One of its Attorneys

Dated: December 14, 2005

McGuireWoods LLP
77 West Wacker, Suite 4100
Chicago, IL 60601
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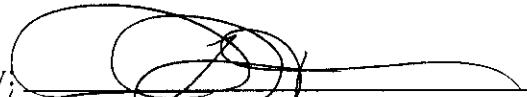
CERTIFICATE OF SERVICE

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

Respectfully submitted,

CSX TRANSPORTATION, INC.

By:



David L. Rieser
One of its Attorneys

Dated: December 14, 2005

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77 West Wacker, Suite 4100
Chicago, IL 60601
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