

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 16-61
)	(Enforcement – Air)
AMSTED RAIL COMPANY, INC.,)	
)	
Respondent.)	

NOTICE OF FILING

To: Carol Webb	Jamie D. Getz
Hearing Officer	Assistant Attorney General
Illinois Pollution Control Board	Environmental Bureau
1021 North Grand Avenue East	69 West Washington Street, 18 th Floor
P.O. Box 19274	Chicago, Illinois 60602
Springfield, Illinois 62794-9274	

PLEASE TAKE NOTICE that on this 29th day of April 2016, the following was filed electronically with the Illinois Pollution Control Board: **Respondent Amsted Rail Company, Inc.'s Answer and Affirmative Defense to Counts I-VI**, which is attached and herewith served upon you.

AMSTED RAIL COMPANY, INC.

By: s/Elizabeth S. Harvey
One of its attorneys

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CERTIFICATE OF SERVICE

I, the undersigned, state that a copy of this notice and the above-described document were served electronically upon all counsel of record on April 29, 2016.

s/Elizabeth S. Harvey

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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v.)	PCB 16-61
)	(Enforcement-Air)
AMSTED RAIL COMPANY, INC.)	
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ANSWER AND AFFIRMATIVE DEFENSE TO COUNTS I-VI

Respondent AMSTED RAIL COMPANY, INC., through its attorneys Swanson, Martin & Bell, LLP, answers Counts I through VI of complainant's complaint, and pleads affirmative defenses. This answer and affirmative defense supplements Amsted Rail's answer and affirmative defenses to Counts VII through XIII of the complaint, filed on January 15, 2016.

COUNT I

FAILURE TO INSPECT AND MAINTAIN PROCESS EMISSION UNITS

1-9. Complainant realleges and incorporates by reference paragraphs 1 through 6, 8, 18, and 19 of the foregoing section of this Complaint titled, "The Parties and Background" as paragraphs 1 through 9 of this Count I.

ANSWER: Respondent realleges and incorporates by reference its answers to paragraphs 1 through 6, 8, 18, and 19 as its answers to paragraphs 1 through 9 of this Count I.

10. Section 9(a) of the Act, 415 ILCS 5/9(a) (2014) provides as follows:
No person shall:

- a) Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act.

ANSWER: The quoted section speaks for itself and no answer is necessary.

However, respondent denies any factual or legal inference about respondent or its activities.

11. Section 3.165 of the Act, 415 ILCS 5/3.165 (2014) defines contaminant as: "Contaminant" is any solid, liquid or gaseous matter, any odor or any form of energy, from whatever source.

ANSWER: The quoted section speaks for itself and no answer is necessary.

However, respondent denies any factual or legal inference about respondent or its activities.

12. PM is a "contaminant," as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2014).

ANSWER: The allegations of paragraph 12 are legal conclusions to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

13. Section 3.315 of the Act, 415 ILCS 5/3.315 (2014) defines person as: "Person" is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency or any other legal entity or their legal representative, agent or assigns.

ANSWER: The quoted section speaks for itself and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.

14. As a Delaware corporation, Respondent is a "person" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2014).

ANSWER: The allegations of paragraph 14 are legal conclusions to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

15. Sections 212.324(a) and (f)(1-3) of the Illinois Pollution Control Board ("Board") Air Pollution Regulations, 35 Ill. Adm. Code 212.324(a) and (f)(1-3) provide in pertinent part as follows:

Process Emission Units in Certain Areas

a) Applicability.

- 1) This Section shall apply to any process emission unit located in any of the following areas:

- C) That area bounded by lines from Universal Transmercator (UTM) coordinate 744000mE, 4290000mN, east to 753000mE, 4290000mN, south to 753000mE, 4283000mN, west to 744000mE, 4283000mN, north to 744000mE, 429000mN, in the vicinity of Granite City in Madison County, as shown in Illustration F of this Part.

- f) Maintenance and Repair. For any process emission unit subject to subsection (a) of this Section, the owner or operator shall maintain and repair all air pollution control equipment in a manner that assures that the emission limits and standards in this Section shall be met at all times. This Section shall not affect the applicability of 35 Ill. Adm. Code 201.149. Proper maintenance shall include the following minimum requirements:

- 1) Visual inspections of air pollution control equipment;
- 2) Maintenance of an adequate inventory of spare parts; and
- 3) Expeditious repairs, unless the emission unit is shut down.

ANSWER: The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.

16. The electric arc furnaces are process emission units located in the area identified in 35 Ill. Adm. Code 212.324(a)(1)(C).

ANSWER: The allegations of paragraph 16 are legal conclusions to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

17. At the time of the Illinois EPA's August 2008 Inspection, the ductwork for baghouses for the electric arc furnaces ("APCE Ductwork") was emitting PM.

ANSWER: Respondent denies the allegations of paragraph 17.

18. At the time of the Illinois EPA's August 2008 Inspection, Respondent had failed to inspect and properly maintain the APCE Ductwork.

ANSWER: Respondent denies the allegations of paragraph 18.

19. On December 28, 2008, Respondent repaired the APCE Ductwork.

ANSWER: Respondent admits that on December 28, 2008, it performed work on the APCE ductwork. Respondent denies any legal inference about respondent or its activities.

20. From at least August 27, 2008 through December 28, 2008, on dates better known to Respondent, Respondent failed to inspect and properly maintain the APCE Ductwork, in violation of Section 212.324(f)(1-3) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 212.324(f)(1-3).

ANSWER: The allegations of paragraph 20 are legal conclusions to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

21. By causing, threatening or allowing the discharge of PM, a contaminant, into the environment in violation of 35 Ill. Adm. Code 212.324(f)(1-3), Respondent thereby also violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2014).

ANSWER: The allegations of paragraph 21 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

COUNT II
FAILURE TO MAINTAIN AIR POLLUTION EMISSION CONTROL RECORDS

1-19. Complainant realleges and incorporates by reference paragraphs 1 through 11 and 18 and 19 of the foregoing section of this Complaint titled, "The Parties and Background" and paragraphs 10 through 15 of Count I as paragraphs 1 through 19 of this Count II.

ANSWER: Respondent realleges and incorporates by reference paragraphs 1 through 11 and 18 and 19 of the section of the complaint titled, "The Parties and Background" and paragraphs 10 through 15 of Count I as its answers to paragraphs 1 through 19 of Count II.

20. At the time of the Illinois EPA's August 2008 Inspection of the Facility, Respondent failed to record all maintenance events conducted pursuant to monthly inspections of baghouses and scrubbers for the Core Sand System, Molding Sand System, Metal Processing Equipment, and Casting/Finishing Operations at the Facility.

ANSWER: Respondent denies the allegations of paragraph 20.

21. The Core Sand System, Molding Sand System, Metal Processing Equipment, and Casting/Finishing Operations at the Facility each emits, or has the potential to emit, PM, a contaminant, as defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2014).

ANSWER: The allegations of paragraph 21 are legal conclusions to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

22. Section 212.324(g)(1) of the Board Air Pollution Regulations, 35 ILCS 212.324(g)(1), provides as follows:

Recordkeeping of Maintenance and Repair.

- 1) Written records of inventory and documentation of inspections, maintenance, and repairs of all air pollution control equipment shall be kept in accordance with subsection (f) of this Section.

ANSWER: The quoted section speaks for itself and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.

23. Section 3.120 of the Act, 415 ILCS 5/3.120 (2014), provides the following definition:

“Air pollution control equipment” means any equipment or facility of a type intended to eliminate, prevent, reduce or control the emission of a specified air contaminants to the atmosphere. Air pollution control equipment includes, but is not limited to, landfill gas recovery facilities.

ANSWER: The quoted section speaks for itself and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.

24. The baghouses and scrubbers that service the Core Sand System, Molding Sand System, Metal Processing Equipment, and Casting/Finishing Operations at the Facility are “air pollution control equipment” as that term is defined in Section 3.120 of the Act, 415 ILCS 5/3.120 (2014).

ANSWER: The allegations of paragraph 24 are legal conclusions to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

25. By not recording all maintenance events conducted pursuant to monthly inspections of baghouses and scrubbers for the Core Sand System, Molding Sand System, Metal Processing Equipment, and Casting/Finishing Operations at the Facility, Respondent violated Section 212.324(g)(1) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 212.324(g)(1).

ANSWER: The allegations of paragraph 25 are legal conclusions to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

26. By causing or threatening or allowing the discharge or emission of PM into the environment so as to violate regulations or standards adopted by the Board under this Act, Respondent has thereby also violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2014).

ANSWER: The allegations of paragraph 26 are legal conclusions to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

COUNT III
FAILURE TO MAINTAIN EMISSION UNIT RECORDS

1-19. Complainant realleges and incorporates by reference paragraphs 1 through 11 and 18 and 19 of the foregoing section of this Complaint titled, "The Parties and Background" and paragraphs 10 through 15 of Count I as paragraphs 1 through 19 of this Count III.

ANSWER: Respondent realleges and incorporates by reference paragraphs 1 through 11 and 18 and 19 of the section of the complaint titled, "The Parties and Background" and paragraphs 10 through 15 of Count I as its answers to paragraphs 1 through 19 of Count III.

20. Section 212.316(a) and (g) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 212.316(a) and (g), provides in pertinent part as follows:

Emission Limitations for Emission Units in Certain Areas

a) Applicability. This Section shall apply to those operations specified in Section 212.302 of this Subpart and that are located in areas defined in Section 212.324(a)(1) of this Part.

g) Recordkeeping and Reporting

- 1) The owner or operator of any fugitive particulate matter emission unit subject to this Section shall keep written records of the application of control measures as may be needed for compliance with the opacity limitations of this Section and shall submit to the Agency an annual report containing a summary of such information.
- 2) The records required under this subsection shall include at least the following:

- C) A map or diagram showing the location of all emission units controlled, including the location, identification, length, and width of roadways.

ANSWER: The quoted section speaks for itself, and no answer is necessary.

However, respondent denies any factual or legal inference about respondent or its activities.

21. Section 212.302 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 212.302, provides, in pertinent part, as follows:

- a) Sections 212.304 through 212.310 and 212.312 of this Subpart shall apply to all mining operations (SIC major groups 10 through 14), manufacturing operations (SIC major groups 20 through 39 except for those operations subject to Subpart S of this Part (Grain-Handling and Grain-Drying Operations) that are outside the areas defined in Section 212.324(a)(1) of this Part), and electric generating operations (SIC group 491), which are located in the areas defined by the boundaries of the following townships, notwithstanding any political subdivisions contained therein, as the township boundaries were defined on October 1, 1979, in the following counties:

Madison: Alton, Chouteau, Collinsville, Edwardsville, Fort Russell, Godfrey, Granite City, Nameoki, Venice, Wood River

- b) In the geographical areas defined in Section 212.324(a)(1) of this Part, Sections 212.304 through 212.310, 212.312, and 212.316 of this Subpart shall apply to all emission units identified in subsection (a) of this Section, and shall further apply to the following operations: grain-handling and grain-drying (subpart S of this Part), transportation, communications, electric, gas, and sanitary services (SIC major groups 40 through 49). Additionally, Sections 212.304 through 212.310, 212.312, and 212.316 of this Subpart shall apply to wholesale trade-

farm supplies (SIC Industry No. 5191) located in the vicinity of Granite City, as defined in Section 212.324(a)(1)(C) of this Part.

- c) Emission units must comply with subsection (b) of this Section by May 11, 1993, or upon initial start-up, which occurs later.

ANSWER: The quoted section speaks for itself, and no answer is necessary.

However, respondent denies any factual or legal inference about respondent or its activities.

22. The Facility is a manufacturing operation located within Granite City, Madison County, Illinois, and is therefore an operation specified in Section 212.302 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 212.302.

ANSWER: The allegations of paragraph 22 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

23. Respondent's operations are located in an area defined in Section 212.324(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 212.324(a).

ANSWER: The allegations of paragraph 23 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

24. Section 211.4370 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 211.4370, provides as follows:

"Owner or operator" means any person who owns, operates, leases, controls, or supervises a source, an emission unit or air pollution control equipment.

ANSWER: The quoted section speaks for itself, and no answer is necessary.

However, respondent denies any factual or legal inference about respondent or its activities.

25. Section 211.2490 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 211.2490, provides as follows:

“Fugitive particulate matter” means any particulate matter emitted into the atmosphere other than through a stack, provided that nothing in this definition or in 35 Ill. Adm. Code 212, Subpart K shall exempt any emission unit from compliance with other provisions of 35 Ill. Adm. Code 212 otherwise applicable merely because of the absence of a stack.

ANSWER: The quoted section speaks for itself, and no answer is necessary.

However, respondent denies any factual or legal inference about respondent or its activities.

26. Section 211.1950 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 211.1950, provides as follows:

“Emission unit” means any part or activity at a stationary source that emits or has the potential to emit any air pollutant.

ANSWER: The quoted section speaks for itself, and no answer is necessary.

However, respondent denies any factual or legal inference about respondent or its activities.

27. Section 211.370 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 211.370, provides as follows:

“Air pollutant” means an air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the atmosphere. Such term includes any precursors to the formation of any air pollutant, to the extent that the relevant statute or rule has

identified such precursor or precursors for particular purpose for which the term "air pollutant" is used.

ANSWER: The quoted section speaks for itself and no answer is necessary.

However, respondent denies any factual or legal inference about respondent or its activities.

28. The roadways at the Facility emit, or have the potential to emit, PM, an "air pollutant," as that term is defined in 35 Ill. Adm. Code 211.370.

ANSWER: The allegations of paragraph 28 are legal conclusions to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

29. The roadways at the Facility are "fugitive particulate matter emission units," as those terms are defined in 35 Ill. Adm. Code 211.1950 and 211.2490.

ANSWER: The allegations of paragraph 29 are legal conclusions to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

30. Respondent is an "owner or operator" of fugitive particulate matter emission units, as that term is defined in 35 Ill. Adm. Code 211.4370.

ANSWER: The allegations of paragraph 30 are legal conclusions to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

31. At the time of the Illinois EPA's August 2008 Inspection of the Facility, Respondent failed to maintain records that identify the sweeping of paved roadways at the Facility.

ANSWER: Respondent denies the allegations of paragraph 31.

32. By failing to maintain records identifying the sweeping of paved roadways at the Facility, Respondent violated Section 212.316(g)(1) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 212.316(g)(1).

ANSWER: The allegations of paragraph 32 are legal conclusions to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

33. At the time of the Illinois EPA's August 2008 Inspection of the Facility, Respondent's Fugitive Particulate Matter Operating Program did not contain complete and up-to-date maps showing the location of all emission units controlled, including the location, identification, length, and width of all roadways associated with Respondent's activities for the reclamation of used sand at the Facility.

ANSWER: The allegations of paragraph 33 are legal conclusions to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

34. By failing to maintain complete and up-to-date maps showing the location of all emission units controlled, including the location, identification, length, and width of all roadways associated with Respondent's activities for the reclamation of used sand at the Facility, Respondent violated Section 212.316(g)(2)(C) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 212.316(g)(2)(C).

ANSWER: The allegations of paragraph 34 are legal conclusions to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

35. By causing or threatening or allowing the discharge or emission of PM into the environment so as to violate regulations or standards adopted by the Board under this Act, Respondent has thereby also violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2014).

ANSWER: The allegations of paragraph 35 are legal conclusions to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

COUNT IV
VIOLATION OF FUGITIVE PARTICULATE MATTER OPERATING PROGRAM

1-20. Complainant realleges and incorporates by reference paragraphs 1 through 11, 17, 18 and 19 of the foregoing section of this Complaint titled, "The Parties and Background," paragraphs 10 through 14 of Count I, and paragraph 24 of Count III as paragraphs 1 through 20 of this Count IV.

ANSWER: Respondent realleges and incorporates by reference paragraphs 1 through 11, 17, 18 and 19 of the section of the complaint titled, "The Parties and Background" and paragraphs 10 through 14 of Count I, and paragraph 24 of Count III, as its answers to paragraphs 1 through 20 of Count IV.

21. Section 212.309(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 212.309(a), provides as follows:

Operating Program

- a) The emission units described in Sections 212.304 through 212.308 and Section 212.316 of this Subpart shall be operated under the provisions of an operating program, consistent with the requirements set forth in Sections 212.310 and 212.312 of this Subpart, and prepared by the owner or operator and submitted to the Agency for its review. Such operating program shall be designed to significantly reduce fugitive particulate matter emissions.

ANSWER: The quoted section speaks for itself and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.

22. On May 24, 2001, Respondent submitted a Fugitive Particulate Matter Operating Program for the Facility pursuant to Section 212.309(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 212.309(a).

ANSWER: Respondent admits the allegations of paragraph 22.

23. The Fugitive Particulate Matter Operating Program required Respondent to collect air pollution control dust into super-sak bags for disposal to prevent fugitive PM emissions.

ANSWER: Respondent admits the allegations of paragraph 23.

24. Dust from the baghouses that control PM emissions for the Shakeout, Knockout and SB-5 at the Facility (Baghouse Dust") is collected at screw conveyors connected to the respective baghouses.

ANSWER: Respondent admits the allegations of paragraph 24.

25. At the time of the Illinois EPA's August 2008 Inspection of the Facility, the Baghouse Dust was leaking from the screw conveyors.

ANSWER: The allegations in paragraph 25 are vague. Respondent denies the allegations of paragraph 25.

26. Because the Baghouse Dust was leaking from the screw conveyors that service the baghouses, the measures used to collect and handle dust from the baghouses were not properly maintained, and thereby Respondent failed to maintain the baghouses in a manner consistent with Respondent's Fugitive Particulate Matter Operating Program.

ANSWER: The allegations in paragraph 26 are vague. Respondent denies the allegations of paragraph 26.

27. By failing to maintain the baghouses utilized for control of the Shakeout, Knockout, and SB-5 in a manner consistent with Respondent's Fugitive Particulate Matter Operating Program for the Facility, Respondent violated Section 212.309(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 212.309(a).

ANSWER: The allegations of paragraph 27 are legal conclusions to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

28. Section 212.312 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 212.312, provides as follows:

Amendment to Operating Program

The operating program shall be amended from time to time by the owner or operator so that the operating program is current. Such amendments shall be consistent with this Subpart and shall be submitted to the Agency for its review.

ANSWER: The quoted section speaks for itself and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.

29. At the time of the Illinois EPA's August 2008 Inspection of the Facility, Respondent was running the used sand screening/recycling operations at the Facility. A single-deck screen had been constructed and was being operated at the Facility to screen sand from an on-site landfill ("Sand Screen"). The screened sand would then be trucked offsite. The unpaved traffic area leading up and around the Sand Screen had not been watered and the area was generating fugitive PM emissions. Respondent's Fugitive

Particulate Matter Operating Program had not been amended to add the traffic areas associated with the Sand Screen and a ball drop operation at the Facility.

ANSWER: The allegations in paragraph 29 are an improper narrative, compound, and call for a legal conclusion to which no answer is required. To any extent an answer is required, respondent denies the allegations of paragraph 29.

30. By not amending the Fugitive Particulate Matter Operating Program for the Facility to contain up-to-date information on the normal traffic patterns associated with the Sand Screen and the ball drop operation at the Facility, Respondent violated Section 212.312 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 212.312.

ANSWER: The allegations of paragraph 30 are legal conclusions to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

31. By causing or threatening or allowing the discharge or emission of PM into the environment or so as to violate Sections 212.309(a) and 212.312 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 212.309(a) and 212.312, Respondent has thereby also violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2014).

ANSWER: The allegations of paragraph 31 are legal conclusions to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

COUNT V
CONSTRUCTING AN EMISSION SOURCE WITHOUT A PERMIT

1-14. Complainant realleges and incorporates by reference paragraphs 1 through 6 and 17 through 19 of the foregoing section of this Complaint titled, "The Parties and Background," paragraphs 11 through 14 of Count I, and paragraph 29 of Count IV as paragraphs 1 through 14 of this Count V.

ANSWER: Respondent realleges and incorporates by reference paragraphs 1 through 6 and 17 through 19 of the section of the complaint titled, "The Parties and Background," paragraphs 11 through 14 of Count I, and paragraph 29 of Count IV, as its answers to paragraphs 1 through 14 of this Count V.

15. Respondent failed to apply for and obtain a construction permit from the Illinois EPA prior to constructing the Sand Screen at the Facility.

ANSWER: The implication of paragraph 15 that respondent was responsible for applying for and obtaining a construction permit is a legal conclusion, to which no answer is required. To the extent an answer is required, respondent denies the allegations of this paragraph.

16. On September 8, 2009, the Illinois EPA issued to Respondent Construction Permit 09060002, which addressed the prior construction of the Sand Screen at the Facility.

ANSWER: Respondent denies any legal conclusions from the use of the word "prior" and admits the remaining allegations of paragraph 16.

17. Section 9(b) of the Act, 415 ILCS 5/9(b) (2014), provides as follows:

No person shall:

(b) construct, install or operate any equipment, facility, vehicle, vessel, or aircraft capable of causing or contributing to air pollution or designed to prevent air pollution, of any type designated by Board regulations, without a permit granted by the Agency, or in violation of any conditions imposed by such permit.

ANSWER: The quoted section speaks for itself and no answer is necessary.

However, respondent denies any factual or legal inference about respondent or its activities.

15 [sic]. Section 3.115 of the Act, 415 ILCS 5/3.115 (2014), defines air pollution

as:

“Air Pollution” is the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

ANSWER: The quoted section speaks for itself and no answer is necessary.

However, respondent denies any factual or legal inference about respondent or its activities.

16 [sic]. The Sand Screen emits, or has the potential to emit, PM, a contaminant as defined by Section 3.165 of the Act, 415 ILCS 5/3.165 (2014).

ANSWER: The allegations of paragraph 16 are legal conclusions to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

17 [sic]. The Sand Screen at the Facility is capable of causing or contributing to “air pollution” as that term is defined in Section 3.115 of the Act, 415 ILCS 5/3.115. (2014).

ANSWER: The allegations of paragraph 17 are legal conclusions to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

18 [*sic*]. By constructing the Sand Screen without a construction permit granted by the Illinois EPA, Respondent violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2014).

ANSWER: The allegations of paragraph 18 are legal conclusions to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

19 [*sic*]. Section 201.142 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.142, provides as follows:

No person shall cause or allow the construction of any new emission source or any new air pollution control equipment, or cause or allow the modification of any existing emission source or air pollution control equipment, without first obtaining a construction permit from the Agency, except as provided in Section 201.146.

ANSWER: The quoted section speaks for itself and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.

20. Section 201.102 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.102, contains the following definitions:

"Air Contaminant": any solid, liquid or gaseous matter, any odor or any form of energy that is capable of being released into the atmosphere from an emission source.

"Air Pollution Control Equipment": any equipment or facility of a type intended to eliminate, prevent, reduce or control the emission of specified air contaminants to the atmosphere.

"Emission Source": any equipment or facility of a type capable of emitting specified air contaminants to the atmosphere.

"New Air Pollution Control Equipment": any air pollution control equipment, the construction or modification of which is commenced on or after April 14, 1972.

"New Emission Source": any emission source, the construction or modification of which is commenced on or after April 14, 1972.

"Specified air contaminant": any air contaminant as to which this Subtitle contains emissions standards or other specific limitation.

ANSWER: The quoted section speaks for itself and no answer is necessary.

However, respondent denies any factual or legal inference about respondent or its activities.

21. The PM discharged during the operation of the Sand Screen is an "air contaminant," as that term is defined in Section 201.102 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.102.

ANSWER: The allegations of paragraph 21 are legal conclusions to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

22. Subtitle B of 35 Ill. Adm. Code contains emission standards and limitations for PM. Therefore, the Sand Screen is capable of emitting PM, a specified air contaminant, to the atmosphere and constitutes an "emission source," as that term is defined in Section 201.102 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.102.

ANSWER: The allegations of paragraph 22 are legal conclusions to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

23. Respondent constructed the Sand Screen in 2008, on a date or dates better known to Respondent, thus the Sand Screen constitutes a "new emission source" as that term is defined in Section 201.102 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.102.

ANSWER: The allegations of paragraph 23 are legal conclusions to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

24. On dates better known to Respondent, Respondent constructed a new emission source at the Facility without first obtaining a permit from the Illinois EPA authorizing the construction of the Sand Screen, and thereby Respondent violated Section 201.142 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.142.

ANSWER: The allegations of paragraph 24 are legal conclusions to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

COUNT VI
FAILURE TO SUBMIT CONSTRUCTION PERMIT FEE

1-27. Complainant realleges and incorporates by reference paragraphs 1 through 6 and 17 through 19 of the foregoing section of this Complaint titled, "The Parties and Background," paragraphs 11 through 14 of Count I, paragraph 29 of Count IV, and paragraphs 15 through 27 of Count V as paragraphs 1 through 27 of this Count V [sic].

ANSWER: Respondent realleges and incorporates by reference paragraphs 1 through 6 and 17 through 19 of the section of the complaint titled, "The Parties and Background," paragraphs 11 through 14 of Count I, paragraph 29

of Count IV, and paragraphs 15 through 27 of Count V as its answers to paragraphs 1 through 27 of this Count VI.

28. Section 9.12(a) of the Act, 415 ILCS 5/9.12(a) (2014), provides as follows:

- (a) An applicant for a new or revised air pollution construction permit shall pay a fee, as established in this Section, to the Agency at the time he or she submits the application for a construction permit. Except as set forth below, the fee for each activity or category listed in this Section is separate and is cumulative with any other applicable fee listed in this Section.

ANSWER: The quoted section speaks for itself and no answer is necessary.

However, respondent denies any factual or legal inference about respondent or its activities.

29. Respondent did not pay a fee for a construction permit authorizing construction of the Sand Screen at the time Respondent was required to submit an application for a construction permit.

ANSWER: The allegations of paragraph 29 are legal conclusions to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

30. By not timely paying a fee for a construction permit authorizing construction of the Sand Screen at the Facility, Respondent violated Section 9.12(a) of the Act, 415 ILCS 5/9.12(a) (2014).

ANSWER: The allegations of paragraph 30 are legal conclusions to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

AFFIRMATIVE DEFENSE

Respondent Amsted Rail Company, Inc. pleads the following affirmative defense:

Third Affirmative Defense¹
Illinois Statute of Limitations
(Counts I through VI)

1. This complaint was filed with the Board on November 16, 2015.
2. The Illinois Environmental Protection Act (Act) does not contain a statute of limitations on enforcement actions brought pursuant to the Act. Likewise, the Board's procedural rules do not contain a statute of limitations on enforcement actions.
3. However, the Illinois Code of Civil Procedure establishes a five-year statute of limitations for "all civil actions not otherwise provided for." 735 ILCS 5/13-205.
4. The Board's procedural rules specifically provide that "the Board may look to the Code of Civil Procedure...where the Board's procedural rules are silent." 35 Ill. Adm. Code 101.100(b).
5. The violations alleged in Counts I, II, III, IV, V, and VI are not brought on behalf of the public interest. All of those violations are past violations, long since corrected.
6. Thus, the five-year statute of limitations (735 ILCS 5/13-205) is applicable to matters alleged in this complaint.
7. All alleged violations occurring prior to November 16, 2010 are barred by the Illinois five-year statute of limitations. Further, all alleged violations of which Complainant had knowledge prior to November 16, 2010 are barred by the Illinois five-year statute of limitations.

¹ Respondent pled two affirmative defenses in its January 15, 2016 answer and affirmative defenses to Counts VII through XIII. The instant affirmative defense is titled "Third Affirmative Defense" to avoid confusion with those two affirmative defenses.

8. Counts I alleges violations which occurred between August 27, 2008 and December 28, 2008. (Count I, par. 20.) All of the violations alleged in Count I occurred before November 16, 2010, and are barred by the Illinois five-year statute of limitations.

9. Counts II, III, and IV are based on Illinois EPA's August 2008 inspection. (Count II, par. 20; Count III, par. 31; Count IV, par. 25.) The violations alleged in Counts II, III, and IV occurred before November 16, 2010, and Complainant the People of the State of Illinois had notice of those alleged violations before November 16, 2010. The violations alleged in Counts II, III, and IV are barred by the Illinois five-year statute of limitations.

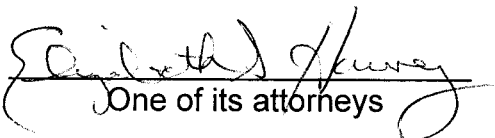
10. Counts V and VI allege permit violations, and failure to timely pay a permit fee, beginning in 2008, which were corrected by a permit issued on September 8, 2009. (Counts V and VI, pars. 16 and 23.) All of the violations alleged in Counts V and VI occurred prior to November 16, 2010, and are barred by the Illinois five-year statute of limitation.

WHEREFORE, the Board should find that the violations alleged in Counts I, II, III, IV, V, and VI are barred by the Illinois statute of limitations, and provide such other relief as the Board deems appropriate.

Respectfully submitted,

AMSTED RAIL COMPANY, INC.

By:


One of its attorneys

Dated: April 29, 2016

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