

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB No. 2016-065
)	(Enforcement – Water)
TERMINAL RAILROAD ASSOCIATION)	
OF ST. LOUIS, a Missouri corporation,)	
)	
Respondent.)	

**TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS’
ANSWER AND AFFIRMATIVE DEFENSES TO COMPLAINANT’S
COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF**

COMES NOW Terminal Railroad Association of St. Louis (“Terminal Railroad”) and for its Answer and Affirmative Defenses to the People of the State of Illinois’ (“Complainant”) Complaint for Injunctive and Other Relief (“the Complaint”), states as follows:

**COUNT I:
FAILURE TO MAINTAIN GROUNDWATER MONITORING WELLS**

1. Terminal Railroad lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 1 of the Complaint, and, therefore, denies the same.

2. Paragraph 2 of the Complaint sets forth legal conclusions to which no response is required. To the extent that further response is required, Terminal Railroad lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 2 of the Complaint, and, therefore, denies the same.

3. Paragraph 3 of the Complaint sets forth legal conclusions to which no response is required. To the extent that further response is required, Terminal Railroad lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 3 of the Complaint, and, therefore, denies the same.

4. Terminal Railroad admits that it is a Missouri corporation and its registered agent is CT Corporation System, 120 South Central Avenue, Clayton, Missouri 63105. Terminal Railroad otherwise denies the remaining allegations in Paragraph 4 of the Complaint.

5. Terminal Railroad denies the allegations in Paragraph 5 of the Complaint.

6. Terminal Railroad admits that on or about August 21, 1997, it entered into a plea agreement, which agreement contains the terms of said plea. Terminal Railroad denies the other allegations in Paragraph 6 of the Complaint.

7. Paragraph 7 of the Complaint sets forth legal conclusions to which no response is required. To the extent that further response is required, Terminal Railroad lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 7 of the Complaint, and, therefore, denies the same.

8. Terminal Railroad denies the allegations in Paragraph 8 of the Complaint.

9. Terminal Railroad denies the allegations in Paragraph 9 of the Complaint.

10. Terminal Railroad lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 10 of the Complaint, and, therefore, denies the same.

11. Terminal Railroad lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 11 of the Complaint, and, therefore, denies the same.

12. Terminal Railroad lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 12 of the Complaint, and, therefore, denies the same.

13. Terminal Railroad denies the allegations in Paragraph 13 of the Complaint.

14. Terminal Railroad denies the allegations in Paragraph 14 of the Complaint.

15. Terminal Railroad denies the allegations in Paragraph 15 of the Complaint.

16. Terminal Railroad denies the allegations in Paragraph 16 of the Complaint.

17. Terminal Railroad denies the allegations in Paragraph 17 of the Complaint.

18. Terminal Railroad denies the allegations in Paragraph 18 of the Complaint.

19. Terminal Railroad denies the allegations in Paragraph 19 of the Complaint.

20. Terminal Railroad denies the allegations in Paragraph 20 of the Complaint.

21. Terminal Railroad denies the allegations in Paragraph 21 of the Complaint.

22. Terminal Railroad denies the allegations in Paragraph 22 of the Complaint.

23. Paragraph 23 of the Complaint sets forth a legal conclusion to which no response is required. To the extent that further response is required, Terminal Railroad lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 23 of the Complaint, and, therefore, denies the same.

24. Paragraph 24 of the Complaint sets forth a legal conclusion to which no response is required. To the extent that further response is required, Terminal Railroad lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 24 of the Complaint, and, therefore, denies the same.

25. Paragraph 25 of the Complaint sets forth a legal conclusion to which no response is required. To the extent that further response is required, Terminal Railroad lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 25 of the Complaint, and, therefore, denies the same.

26. Paragraph 26 of the Complaint sets forth a legal conclusion to which no response is required. To the extent that further response is required, Terminal Railroad lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 26 of the Complaint, and, therefore, denies the same.

27. Terminal Railroad denies the allegations in Paragraph 27 of the Complaint.

COUNT II:
FAILURE TO SUBMIT REQUIRED WORKPLAN

1-14. Terminal Railroad hereby incorporates by reference its responses to Paragraphs 1-11 and 24-26 of Count I of the Complaint as its responses to Paragraphs 1-14 of Count II of the Complaint.

15. Terminal Railroad lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 15 of Count II of the Complaint, and, therefore, denies the same.

16. Terminal Railroad denies the allegations in Paragraph 16 of Count II of the Complaint.

17. Terminal Railroad denies the allegations in Paragraph 17 of Count II of the Complaint.

18. Terminal Railroad lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 18 of Count II of the Complaint, and, therefore, denies the same.

19. Paragraph 19 of Count II of the Complaint sets forth a legal conclusion to which no response is required. To the extent that further response is required, Terminal Railroad lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 19 of Count II of the Complaint, and, therefore, denies the same.

20. Terminal Railroad denies the allegations in Paragraph 20 of the Complaint.

COUNT III:
FAILURE TO SAMPLE AND ANALYZE GROUNDWATER

1-20. Terminal Railroad hereby incorporates by reference its responses to Paragraphs 1-20 of Count II of the Complaint as its responses to Paragraphs 1-20 of Count III of the Complaint.

21. Terminal Railroad lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 21 of Count III of the Complaint, and, therefore, denies the same.

22. Terminal Railroad denies the allegations in Paragraph 22 of Count III of the Complaint.

23. Terminal Railroad denies the allegations in Paragraph 23 of Count III of the Complaint.

24. Terminal Railroad denies the allegations in Paragraph 24 of Count III of the Complaint.

25. Terminal Railroad denies the allegations in Paragraph 25 of Count III of the Complaint.

26. Terminal Railroad denies the allegations in Paragraph 26 of Count III of the Complaint.

27. Terminal Railroad denies the allegations in Paragraph 27 of Count III of the Complaint.

28. Terminal Railroad denies the allegations in Paragraph 28 of Count III of the Complaint.

29. Terminal Railroad denies the allegations in Paragraph 29 of Count III of the Complaint.

30. Terminal Railroad denies the allegations in Paragraph 30 of Count III of the Complaint.

31. Terminal Railroad denies the allegations in Paragraph 31 of Count III of the Complaint.

32. Terminal Railroad denies the allegations in Paragraph 32 of Count III of the Complaint.

33. Terminal Railroad denies the allegations in Paragraph 33 of Count III of the Complaint.

34. Terminal Railroad denies the allegations in Paragraph 34 of Count III of the Complaint.

35. Terminal Railroad denies the allegations in Paragraph 35 of Count III of the Complaint.

36. Terminal Railroad lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 36 of Count III of the Complaint, and, therefore, denies the same.

37. Terminal Railroad lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 37 of Count III of the Complaint, and, therefore, denies the same.

38. Terminal Railroad denies the allegations in Paragraph 38 of Count III of the Complaint.

COUNT IV:
FAILURE TO MAINTAIN FINANCIAL ASSURANCE

1-14. Terminal Railroad hereby incorporates by reference its responses to Paragraphs 1-11 and 24-26 of Count I of the Complaint as its responses to Paragraphs 1-14 of Count IV of the Complaint.

15. Terminal Railroad denies the allegations in Paragraph 15 of Count IV of the Complaint.

16. Terminal Railroad lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 16 of Count IV of the Complaint, and, therefore, denies the same.

17. Paragraph 17 of Count IV of the Complaint sets forth a legal conclusion to which no response is required. To the extent that further response is required, Terminal Railroad lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 17 of Count IV of the Complaint, and, therefore, denies the same.

18. Paragraph 18 of Count IV of the Complaint sets forth a legal conclusion to which no response is required. To the extent that further response is required, Terminal Railroad lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 18 of Count IV of the Complaint, and, therefore, denies the same.

19. Terminal Railroad denies the allegations in Paragraph 19 of Count IV of the Complaint.

20. Terminal Railroad denies the allegations in Paragraph 20 of Count IV of the Complaint.

AFFIRMATIVE DEFENSES

Affirmative Defense No. 1

Complainant has not pled facts providing for circumstances sufficient or appropriate for any sort of injunctive or other relief.

Affirmative Defense No. 2

Complainant has not pled facts providing for circumstances sufficient or appropriate for the imposition of civil penalties pursuant to Section 42(a) of the Illinois Environmental Protection Act, 415 ILCS 5/42(a).

Affirmative Defense No. 3

Each and every alleged cause of action is barred by the doctrine of laches.

Affirmative Defense No. 4

Each and every alleged cause of action is barred by the doctrine of waiver.

Affirmative Defense No. 5

Each and every alleged cause of action is barred by the doctrine of estoppel.

Affirmative Defense No. 6

Each and every alleged equitable cause of action is barred by the doctrine of unclean hands.

Affirmative Defense No. 7

If either the Illinois Pollution Control Board's Waste Disposal Regulations or the Illinois Environmental Protection Act were violated as Complainant alleges, then such violations were proximately caused by the negligence and fault of persons and parties other than Terminal Railroad, thereby barring or reducing any relief sought by Complainant herein.

Affirmative Defense No. 8

If either the Illinois Pollution Control Board's Waste Disposal Regulations or the Illinois Environmental Protection Act were violated as Complainant alleges, then such violations were legally caused or contributed to by the negligence or wrongful conduct of other parties, persons

or entities, and that such negligence or wrongful conduct was an intervening and superseding cause of the violations of which Complainant complains.

Affirmative Defense No. 9

Each cause of action of the Complaint is barred by the applicable statutes of limitations.

Affirmative Defense No. 10

Complainant lacks capacity and standing to sue for some or all of the claims it has asserted.

Affirmative Defense No. 11

Complainant is barred from the relief sought herein by reason of its failure to join indispensable and necessary parties.

Affirmative Defense No. 12

In the event spent halogenated solvents, Tetrachloroethylene (PCE), or Trichloroethane (TCA), or other alleged substances were used, stored, received, released, transported, treated, mixed, or disposed of by Terminal Railroad, the volume and toxicity of such were *de minimis* and therefore were insufficient as a matter of law to give rise to liability.

Affirmative Defense No. 13

Each and every alleged cause of action fails to state a claim upon which relief may be granted.

Affirmative Defense No. 14

Terminal Railroad's conduct was not the proximate cause of the conditions or contamination alleged in the Complaint, nor has its conduct necessitated the grant of any injunctive relief or the incurrence of civil penalties pursuant to Section 42(a) of the Illinois Environmental Protection Act, 415 ILCS 5/42(a) with respect thereto.

Affirmative Defense No. 15

Should Terminal Railroad have any liability under either the Illinois Pollution Control Board's Waste Disposal Regulations or the Illinois Environmental Protection Act, which liability is denied, then such liability can be premised only upon Terminal Railroad's proportionate share

of liability, if any, and not premised upon any joint and several liability with any other parties named, unnamed, or to be named in this lawsuit.

Affirmative Defense No. 16

Closure activities at the former Terminal Railroad facility at or south of Bend Road in St. Clair County, Illinois are not subject to the requirements of the Federal Resource Conservation and Recovery Act ("RCRA") or the State of Illinois' hazardous waste closure requirements, including the Illinois Administrative Code 35, Subtitle G, Chapter I, Part 725 ("the Code").

Preservation Rights

Terminal Railroad is filing its Answer and Affirmative Defenses to Complainant's Complaint to preserve its rights and as a placeholder, recognizing that a Stipulation and Proposal for Settlement, which has been signed by Terminal Railroad and the State of Illinois, has been filed with the Illinois Pollution Control Board for its approval. In the event said Stipulation and Proposal for Settlement is not approved by the Illinois Pollution Control Board as submitted, Terminal Railroad reserves the right to file an Amended Answer and Affirmative Defenses to Complainant's Complaint. Terminal Railroad further reserves its right to raise additional Affirmative Defenses and amend its Answer on grounds as may be established through discovery, further investigation, and by the evidence in this case.

WHEREFORE, Terminal Railroad prays that judgment be entered in its favor and against Complainant and that Terminal Railroad be awarded its costs incurred in defense of Complainant's claims and that it be awarded any additional relief that is just and proper.

Respectfully submitted,

THOMPSON COBURN LLP

By /s/ Peter S. Strassner

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**Attorneys for Terminal Railroad
Association of St. Louis**

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served on the date of December 2, 2015 the attached Answer and Affirmative Defenses, upon the following persons by U.S. Mail, by the time of 7 pm, with proper postage of delivery charges prepaid:

Division Chief of Environmental Enforcement
Office of the Attorney General
100 West Randolph Street, Suite 1200
Chicago, IL 60601

/s/ Peter S. Strassner
Peter S. Strassner

December 2, 2015
Date