

BEFOR BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ROBERT F. KASSELLA, JR., and)	
KELLIE R. KASSELLA,)	
Complainant,)	
)	
v.)	PCB No. 06-001
)	(Enforcement Noise)
TNT LOGISTICS)	
NORTH AMERICA, INC.,)	
)	
Respondent.)	

ANSWERS TO AFFIRMATIVE DEFENSES

NOW COMES the Complainant, ROBERT F. KASSELLA, JR. and KELLIE R. KASSELLA., by and through their attorneys, NOLAN LAW OFFICE, and answering Respondent's Affirmative Defenses, states as follows:

1. TNT operates the Facility in order to warehouse and distribute tires.

ANSWER: Complainant admits the allegations set forth in Respondent's Affirmative Defense No. 1. In further answering, Complainant states the affirmative matter asserted herein, by itself or in conjunction with the other affirmative matter set forth by Respondent, is not legally sufficient to constitute a defense herein.

2. Trucks deliver trailers of tires to the Facility.

ANSWER: Complainant admits the allegations set forth in Respondent's Affirmative Defense No. 2. In further answering, Complainant states the affirmative matter asserted herein, by itself or in conjunction with the other affirmative matter set forth by Respondent, is not legally sufficient to constitute a defense herein.

3. TNT does not own or operate these trucks.

ANSWER: Complainant lacks sufficient knowledge to admit or deny the allegations set forth in Respondent's Affirmative Defense No. 3. Notwithstanding, Complainant states the affirmative matter asserted herein, by itself or in conjunction with the other affirmative matter set forth by Respondent, is not legally sufficient to constitute a defense herein. In addition, Complainant states affirmatively that Respondent controls and directs the use and operation of all trucks at and around its facility.

4. Trucks also transport trailers of tires from the Facility.

ANSWER: Complainant admits the allegations set forth in Respondent's Affirmative Defense No. 4. Notwithstanding, Complainant states the affirmative matter asserted herein, by itself or in conjunction with the other affirmative matter set forth by Respondent, is not legally sufficient to constitute a defense herein.

5. TNT does not own or operate these trucks.

ANSWER: Complainant lacks sufficient knowledge to admit or deny the allegations set forth in Respondent's Affirmative Defense No. 5. Notwithstanding, Complainant states the affirmative matter asserted herein, by itself or in conjunction with the other affirmative matter set forth by Respondent, is not legally sufficient to constitute a defense herein. In addition, Complainant states affirmatively that Respondent controls and directs the use and operation of all trucks at and around its facility.

6. Complainants in part appear to allege that noise from these trucks, which TNT does not own or operate, has, at Complainant's property, violated the numeric noise limitations cited by Complainants in Paragraph 5 of their Complaint.

ANSWER: Complainant stands on the allegations of its Complaint and the provisions of the Title 35 of the Illinois Administrative Code cited therein and further states that Respondent's Affirmative Defense No. 6 provides no legally sufficient defense thereto.

7. TNT has no evidence that this is the case.

ANSWER: Complainant denies the allegations set forth in Respondent's Affirmative Defense No. 7.

8. However, if this is the case, such alleged violations relating to trucks which TNT does not own or operate do not constitute violations of the numeric noise limitations by TNT.

ANSWER: Complainant denies the allegations set forth in Respondent's Affirmative Defense No. 8 and further states that relevant provisions of Title 35 of the Illinois Administrative Code mandate noise level limitations from any property-line-noise-source located on any Class A, B or C land to any receiving Class A land. "Property-line-noise-source" is defined at 35 Ill. Adm. Code 900.101 as "any equipment or facility, or combination thereof, which operates within any land used as specified by 35 Ill. Adm. Code 900.101", and no exception is made based on the ownership of the equipment which operates within the land.

Respectfully submitted,

NOLAN LAW OFFICE

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