

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

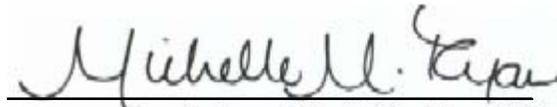
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	AC 09-56
	)	
v.	)	(IEPA No. 136-09-AC)
	)	
GARY J. SZCZEBLEWSKI and	)	
JAMES R. SZCZEBLEWSKI,	)	
	)	
Respondents.	)	

**NOTICE OF FILING**

To: Gary J. Szczeblewski, Esq.  
111 East Franklin Avenue  
Sesser, IL 62884

PLEASE TAKE NOTICE that on this date I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois the following instrument(s) entitled REPLY BRIEF OF COMPLAINANT.

Respectfully Submitted,

  
e-signature valid for IPCB e-filings ONLY

Michelle M. Ryan  
Special Assistant Attorney General

Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
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Springfield, Illinois 62794-9276  
(217) 782-5544

Dated: February 25, 2010

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REPLY BRIEF OF COMPLAINANT

Gary J. and James R. Szczeblewski (“Respondents”) filed their brief in this case on February 19, 2010, following two extensions of time granted by the Hearing Officer. In reply to the factual errors, legal errors, and inappropriate argument contained therein, Complainant, Illinois Environmental Protection Agency (“Illinois EPA”) hereby files this brief.

Respondents’ brief is difficult to read for several reasons, not least of which is the fact that it does not contain a single proper citation to any statute, any regulation, any decision by a court or the Illinois Pollution Control Board (“Board”), or even to the record in this case. This omission is unprofessional, and furthermore inexcusable from a licensed attorney.

Issues of Fact

The Board is required to make its decision in this case “based on the record.” 415 ILCS 5/31.1(d)(2). Therefore, it is important to note the factual assertions contained in Respondents’ brief that are either not of record or contradict the evidence in the record in this case. These are organized in the following paragraphs in the same order they appear in Respondents’ brief.

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Respondents claim that this Administrative Citation (“AC”) is “the result of a second complaint having been filed with the IEPA by the complainant Ned Mitchell.” Resp. Brief, p. 2, *see also* Resp. Brief, p. 5. The exhibits admitted into evidence in this case do not contain any complaints by Mr. Mitchell, and there is no testimonial evidence that Mr. Mitchell filed a “second” complaint. The discussion of the citizen’s complaint made to Illinois EPA by Mr. Mitchell is contained in the transcript at pages 29-33. The only mention of a complaint other than the early 2009 citizen’s complaint was a “complaint” made to the news media regarding Sesser Lake. Tr. p. 31. Illinois EPA’s inspector testified numerous times that Illinois EPA did not receive this “complaint.” Tr. at pp. 31, 33, 39. All references to the “second complaint” should be disregarded.

Respondents claim that with respect to a purported corrective action plan for the site, “(a)dditional time was granted by the Regional Office of (sic) for submission of the said (sic) plan (until July 31, 2009).” Resp. Brief, p. 4. This is a mischaracterization of the evidence in the record, which was analyzed in more detail in Complainant’s Brief, pp. 6-7. Respondents continue on this issue to disparage Illinois EPA’s testimony that a written request for extension was due by June 3, 2009 by stating “It is unknown by the Respondents where this magical date of June 3, 2009 came from....” Respondents’ July 31, 2009 “extension date” is inconsistent with both written evidence (Exh. 2 and 4) and testimony admitted (Tr. at 50), as well as incompatible with their own witness’s recollection of having received a 30-day extension on May 28, 2009 (Tr. at 54, 56), which would have fallen near the end of June, rather than at the end of July. The weight of the evidence on this issue favors Illinois EPA’s position over Respondents’, and it is disingenuous for Respondents to make the bold claim (repeated on pages 5 and 7 of their brief) that July 31, 2009 is an agreed extension date, when it is so well-contradicted in the record.

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Next, Respondents attempt to introduce new evidence through their brief, by stating: “At the time of the discussion about the extension time (sic) to file a plan, there was further discussion regarding individual trespassing on this abandoned coal mine site and the need for a meeting between the parties to assist in the resolution of the Complaint.” Resp. Brief, pp. 4-5. No hint of such a conversation regarding trespassing or a purported meeting is evident in any portion of the record (and Respondents’ loose usage of the term “complaint” throughout their brief makes it unclear exactly what they hoped to resolve). Furthermore, this information is based on hearsay from a declarant who was not present at hearing. Respondent attempted to elicit hearsay testimony at hearing from his witness about a conversation with the exact same declarant, which was objected to during the hearing by Illinois EPA and sustained by the Hearing Officer. Tr. at 55. It is indefensible that Respondents are now making a second attempt at introducing improper hearsay. Illinois EPA renews its objection and asks that these references be stricken in their entirety.

Respondents then claim that they “would have objected also to the informal nature of the complaint.” Resp. Brief, p. 6. It is not clear whether Respondents use of the word “complaint” in this context refers to the citizen’s complaint, the June 11, 2009 inspection report, or the AC. Neither is it evident what was intended by the use of the subjunctive verb. Regardless, there is nothing in the record that impugns the citizen’s complaint, the June 11, 2009 inspection report, or the AC, and as such, this comment should be disregarded.

Following that, Respondents claim that, “Respondents was (sic) unable to give information to rebuttal (sic) or request a meeting due to the fact a complaint had been filed to (sic) the Board.” Resp. Brief, p. 7. These facts are not contained in the record, and therefore

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there is no evidence that they are true. In fact, they directly contradict the inappropriate hearsay mentioned above regarding the potential meeting. They should be stricken.

### Issues of Law

Respondents assert that Illinois EPA failed to “follow the procedural requirements” of the Environmental Protection Act (415 ILCS 5/1 *et seq.* (2008)) (“Act”) (Resp. Brief at 6), and further state that Illinois EPA’s inspector “took it upon herself to violate the provision of the Enforcement Section of the Act” (Resp. Brief at 7). This appears to be a misunderstanding of the applicable law, rather than simply an incorrect statement of fact. Respondents refer to “Title VII Enforcement...Section 31(a)(2),” which the Board well knows is the provision relating to notice. 415 ILCS 5/31(a). Nothing in the record demonstrates that Illinois EPA issued a Violation Notice in this case, nor is there any indication that the case was referred to the Attorney General, rather Illinois EPA took the administrative action of issuing an AC. The provisions of Section 31 of the Act are explicitly inapplicable to AC actions, which are governed by Section 31.1 of the Act. 415 ILCS 5/31(f). Therefore, Respondents arguments on this issue are unsupported by law, and should be disregarded.

Respondents’ request for relief is completely unintelligible. Respondents again use the terms “informal complaint (second complaint)” and “original complaint” without clarification. Resp. Brief, p. 8. Respondents ask that “the informal complaint (second complaint) filed before the board by the Marion Regional Office be remanded back to the Marion Regional Office” and that “the director of the Marion Regional Office” be ordered “that its goal is to resolve the conflict in an amicable manner pursuant to the Act.” *Id.* With all due respect, the Board has no authority to grant any portion of this request for relief, because the Act and regulations constrain the Board’s decision in AC cases. 415 ILCS 5/31.1(d)(2); 35 Ill. Adm. Code 108.500.

Issues of Propriety

Respondents continue the speculation advanced at length at hearing that this case is somehow politically motivated:

“Apparently the investigator at the Marion Regional Office is not concerned about the remedy of the violation that has allegedly occurred but only interested in paying back political favors.”

Resp. Brief at 7.

“The Illinois Assistant Attorney Generals (sic) intent was not carrying out the letter of the law of the Act but instead was to be a ‘buddy’ with the Marion local office and totally disregarding the Act.”

*Id.*

“an insubordinate investigator who was out for personal political gains.”

Resp. Brief at 8.

For all of Respondents’ inflammatory focus on this issue, there remains not one shred of evidence in the record regarding any “political favors” requested or received or any “political gains” desired or received. Nor is there any indication that any employee of Illinois EPA (including the Special Assistant Attorney General) manifested any inappropriate intent or disregard for the law. Indeed, the only evidence in the record regarding this innuendo is that Illinois EPA’s inspector found it laughable (Tr. at 53), because Illinois EPA reports are based upon the inspections of the property, and nothing else. *See* Tr. at 33. These statements are nothing but uncorroborated invective, and should be utterly dismissed as baseless conjecture.

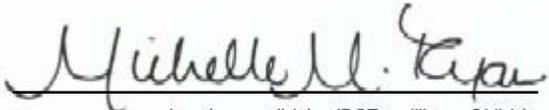
Conclusion

Respondents note that they were “confused” during the hearing (Resp. Brief, p. 6), but after review of their brief, it is unclear whether their confusion outweighs their attempts at confusion. Mr. Gary Szczeblewski is a licensed attorney, representing both himself and his brother. As such, he had a duty to take the time necessary to understand the law and facts relating to their case. The Board should not tolerate his failure to do so, because any ignorance on his part is self-imposed, and should not serve as a defense to either him or his brother in violating the law.

The record in this case supports the violations of Sections 21(p)(1) and (7) of the Act. Illinois EPA requests that the Board enter a final order finding that Respondents violated these sections and imposing the statutory penalty.

Respectfully Submitted,

DATED: February 25, 2010



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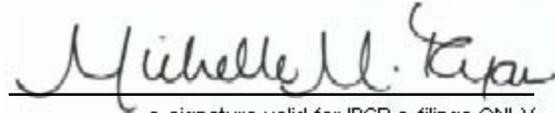
**PROOF OF SERVICE**

I hereby certify that I did on the 25<sup>th</sup> day of February, 2010, send by U.S. Mail with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instrument(s) entitled REPLY BRIEF OF COMPLAINANT

To: Gary J. Szczeblewski, Esq.  
111 East Franklin Avenue  
Sesser, IL 62884

and the original of the same foregoing instrument on the same date by electronic filing

To: John Therriault, Acting Clerk  
Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601



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