

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS)

Complainant,

vs.

APOLLO PLASTICS CORPORATION,)

an Indiana corporation,)

Respondent.)

**No. PCB 09-108
(Enforcement - Air)**

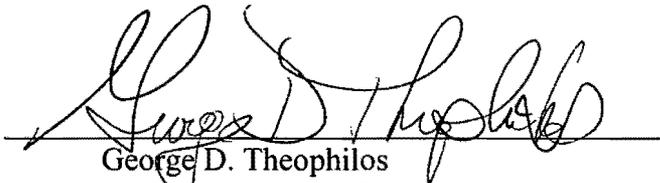
NOTICE OF FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on the 23rd day of September, 2010, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, filed with the Illinois Pollution Control Board, Complainant's Response In Opposition To Respondent's Verified Motion For Stay Of Proceedings, a true and correct copy of which is attached hereto and is hereby served upon you.

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN, Attorney General
of the State of Illinois

By:



George D. Theophilos
Assistant Attorney General
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(312) 814-6986

DATE: September 23, 2010

SERVICE LIST

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**APOLLO PLASTICS CORPORATION,)
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**COMPLAINANT'S RESPONSE IN OPPOSITION TO RESPONDENT'S
VERIFIED MOTION FOR STAY OF PROCEEDINGS FOR CIVIL PENALTIES**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, submits the following response in opposition to the Respondent's Verified Motion For Stay Of Proceedings:

1. The basis for the Respondent's motion is its claim that "it will be unfairly prejudiced legally and financially if its financial hardship is not honored by the Complainant." Respondent's Motion, ¶ 14. Respondent fails to cite to any legal authority as to why its claim provides any basis for a stay under Board Rule 101.514. In fact, Respondent's motion is not supported by either the law or logic.

2. Respectfully, the Complainant is under no duty to honor the Respondent's claimed financial position. Complainant's only duty is to carry its burden of proof in establishing the violations alleged in its complaint. 415 ILCS 5/31(e) (2010)

3. Unreasonable financial hardship is a mitigating factor that the Board may consider under Section 42(h) of the Act, 415 ILCS 5/42(h) (2010), in determining the amount of civil penalty to assess after a finding of liability. Section 42(h) does not create any duty upon Complainant to mitigate penalties.

4. And, the burden of proving mitigating factors, such as financial hardship, is upon the Respondent, not the Complainant. 415 ILCS 5/31(e) (2010)

5. In addition, while inability to pay is a mitigating factor, it is not a bar to a penalty. *See, Standard Scrap Metal Company v. Pollution Control Board*, 142 Ill.App.3d 655, 491 N.E.2d 1251, 1258 (1st Dist.1986).

6. Respondent is attempting to have the Board impose a duty upon the Complainant that does not exist at law.

7. In effect, Respondent's motion, seeks to have the Board stay the enforcement of this case until the Complainant agrees to settle its case on Respondent's terms. Logically, a settlement can only occur if the parties voluntarily agree to a mutually acceptable outcome. The Board cannot order the parties to negotiate indefinitely or force the Complainant to settle the case on Respondent's terms.

8. To be clear, settlement negotiations have occurred in this case. Without compromising confidential settlement discussions, Complainant and Respondent exchanged several settlement offers and counteroffers which have been rejected. Respondent submitted certain financial documents for Complainant's review. Complainant reviewed those documents, concluded that there was no basis to reduce its settlement offer further, and so advised the Respondent in writing.

9. Respondent subsequently presented what Respondent characterizes as supplemental information so that the Complainant could reconsider, yet again, its settlement position. Simply put, at this point in time, the Complainant is unwilling to alter its settlement position and has concluded that the most efficient way to resolve this matter is to proceed with discovery and hearing thereafter.

10. The decision of whether to resolve an enforcement case via settlement or trial is a matter of prosecutorial discretion.

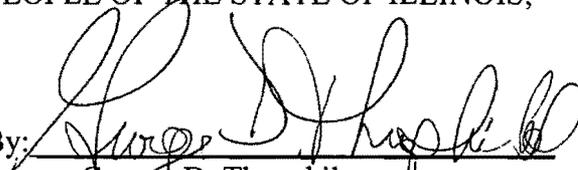
11. If Respondent believes that it has compelling information to submit in mitigation of a civil penalty, then the proper way to proceed is for Respondent to enter that information into evidence at hearing.

CONCLUSION

Respondent has failed to cite any legal authority in support of its proposition that the Complainant is under a duty "to honor" Respondent's claimed financial position because no such duty exists under the law. The Act does not place any duty upon the Complainant to consider unreasonable financial hardship in bringing cases for enforcement. The burden of proving financial hardship rests with the Respondent, not the Complainant. 415 ILCS 5/31(e) And, whether to settle or prosecute is a matter of discretion which rests solely with Complainant.

WHEREFORE, for the foregoing reasons, Respondent respectfully requests that the Board deny Respondent's Verified Motion For Stay Of Proceedings.

PEOPLE OF THE STATE OF ILLINOIS,

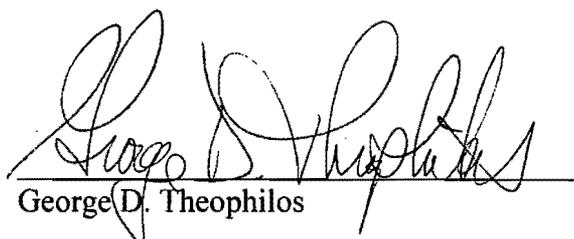
By: 

George D. Theophilos
Assistant Attorney General
Environmental Enforcement Bureau North
69 W. Washington, Suite 1800
Chicago, Illinois 60602
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September 23, 2010

CERTIFICATE OF SERVICE

I, George D. Theophilos, an attorney, do certify that I caused the forgoing Notice of Filing together with Complainant's In Opposition To Respondent's Verified Motion For Stay Of Proceedings, to be served on each of the above-named persons, by E-filing and e-mail, or Hand Delivery or United States Mail, with postage prepaid, and depositing the same in the U.S. Mail , before 5:00 p.m. this 23rd day of September, 2010.


George D. Theophilos