

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. LISA MADIGAN, Attorney)
 General of the State of Illinois,)
)
 Complainant,)
)
 v.)
)
 SHERIDAN-JOLIET LAND)
 DEVELOPMENT, LLC, an Illinois)
 limited liability company, and)
 SHERIDAN SAND & GRAVEL CO.,)
 an Illinois corporation,)
)
 Respondents.)

PCB No. 13-20
 (Enforcement-Land)

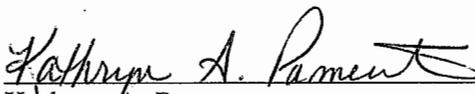
NOTICE OF FILING

To: Kenneth Anspach, Esq.
 Anspach Law Office
 111 West Washington Street
 Suite 1625
 Chicago, Illinois 60602

Bradley P. Halloran
 Hearing Officer
 Illinois Pollution Control Board
 James R. Thompson Center, Suite 11-500
 100 W. Randolph Street
 Chicago, Illinois 60601
 Brad.Halloran@illinois.gov

PLEASE TAKE NOTICE that on the 12th day of April, 2013, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, filed the attached Response to Respondents' Motion to Strike Amended Notice of Electronic Filing and Supporting Memorandum, 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: 
 Kathryn A. Pament
 Assistant Attorney General
 Environmental Bureau
 69 W. Washington St., 18th Floor
 Chicago, IL 60602
 (312) 814-0608

DATE: April 12, 2013

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS)
 by LISA MADIGAN, Attorney General)
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 Complainant,)
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 v.)
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 SHERIDAN-JOLIET LAND)
 DEVELOPMENT, LLC, an Illinois)
 limited-liability company, and SHERIDAN)
 SAND & GRAVEL CO., an Illinois)
 corporation,)
)
 Respondents.)

PCB No. 13-20
 (Enforcement - Land)

**COMPLAINANT'S RESPONSE TO
 RESPONDENTS' MOTION TO STRIKE AMENDED NOTICE OF ELECTRONIC
 FILING AND SUPPORTING MEMORANDUM**

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois ("People or "Complainant"), and responds to SHERIDAN-JOLIET LAND DEVELOPMENT, LLC's and SHERIDAN SAND & GRAVEL CO.'s ("Respondents") Motion to Strike Amended Notice of Electronic Filing and Supporting Memorandum ("Motion to Strike"). In support of this response, the People state as follows:

1. On October 31, 2012, Complainant filed a four-count Complaint (the "Complaint") against the Respondents, alleging violations of the Illinois Environmental Protection Act ("Act") and the Illinois Pollution Control Board's regulations regarding clean construction or demolition debris fill operations ("Board CCDD Regulations").

2. On November 30, 2012, the Respondents filed their Motion to Strike and Dismiss and Supporting Memorandum ("Motion to Dismiss"). Among the contentions made in the Motion to Dismiss, the Respondents set forth a four-sentence argument that the Complaint

should be dismissed because the People did not accompany the Complaint with “a notification to the defendant that financing may be available, though the Illinois Environmental Facilities Financing Act [20 ILCS 3515/1 *et seq.*] to correct such violation.” (Motion to Dismiss at p. 14 (quoting 415 ILCS 5/31(c)(1) (2010))).

3. On February 27, 2013, the Complainant filed its Response to the Respondents’ Motion to Dismiss which argues, among other things, that the Illinois Environmental Facilities Financing Act and the corresponding Section 31(c)(1) notification address financing to correct violations, not the payment of a civil penalty which is the remedy sought against the Respondents in this case. (Response to Motion to Dismiss at pp. 14-15). Alternatively, the Complainant argued that it cured any deficiency by filing an Amended Notice of Electronic Filing on February 27, 2013 with the Illinois Pollution Control Board (the “Board”), which was served on the Respondents and includes the Section 31(c)(1) financing notification.

4. On March 29, 2013, the Respondents filed their eleven-page Motion to Strike the Amended Notice of Electronic Filing, contending that the Complainant (a) was required to file a “Notice That Financing May Be Available,” and (b) is unable to cure the deficiency by filing an Amended Notice of Electronic Filing that contained the financing notification.

5. Section 31(c)(1) of the Act, by its terms, does not require that a stand-alone “Notice That Financing May Be Available” be served on a respondent. Section 31(c)(1) of the Act provides in relevant part that “[s]uch complaint shall be accompanied by a notification to the defendant that financing may be available, through the Illinois Environmental Facilities Financing Act, to correct such violation.” 415 ILCS 5/31(c)(1) (2010). The Complainant’s Amended Notice of Electronic Filing states, “[f]inancing may be available, through the Illinois Environmental Facilities Financing Act, to correct the violations alleged in the Complaint.” (*See*

Amended Notice of Electronic Filing, a true and correct copy of which is attached hereto as Exhibit A). Contrary to the Respondents' contention, a separate "Notice That Financing May Be Available" is not required under Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2010). Similarly, Section 31(c)(1) of the Act does not preclude the inclusion of the financing notification within the written notice of filing of the complaint.

6. In *People v. City of Herrin*, PCB 95-158, 1995 WL 415802 (July 7, 1995), the Board considered whether the failure to include the financing notification in the original notice of filing may be cured through the filing of an amended notice of filing that includes the financing notification. The Board accepted an amended notice of filing that included the financing notification and "interpret[ed] it as an amended complaint curing the financing notification deficiency." *Id.* at *2. Applying *City of Herrin*, the Complainant's Amended Notice of Electronic Filing, that includes the financing notification, cures any deficiency. *City of Herrin* is consistent with *Illinois Environmental Protection Agency v. Production Finishers and Fabricators, Inc.*, PCB No. 85-31, 1986 WL 26688 (Jan. 9, 1986), on which the Respondents rely, in that the Board dismissed the Illinois Environmental Protection Agency's case without prejudice as no notice of filing existed in the case that included the financing notification.¹

7. The Respondents remaining case law citations are inapposite. First, *Illinois Environmental Protection Agency v. Busby*, AC 01-6, 2000 WL 1860141 (Dec. 7, 2000) considered whether the 35-day filing period for a petition for review of an administrative citation may be waived under Section 31.1(d)(1) of the Act, a statutory provision not at issue in this case. Second, unlike *Figueroa v. Deacon*, 404 Ill. App. 3d 48 (1st Dist. 2010), a forcible detainer

¹ The Complainant reserves the right to argue the financing notification is not a jurisdictional requirement, should the Board determine that filing an Amended Notice of Electronic Filing containing the financing notification does not cure the deficiency in an original notice of filing. *See, e.g.*, 415 ILCS 5/5(d) (2010) (statute conferring jurisdiction to the Board over enforcement actions).

action where the statute required personal service of a written demand before the filing of a complaint, no prior written demand to the Respondents was required and service of the complaint is not in issue. Third, *Allord v. Municipal Officers Electoral Bd. for the Village of South Chicago Heights*, 288 Ill. App. 3d 897 (1st Dist. 1997) addressed issues under the Illinois Election Code, not the Illinois Environmental Protection Act. Fourth, unlike *Beck v. Stepp*, 144 Ill.2d 232 (Ill. 1991), the Board is not considering a *nunc pro tunc* order. Rather, as set forth in *City of Herrin*, the Board considers an amended notice of electronic filing containing the Section 31(c)(1) financing notification to be an amended complaint. *City of Herrin*, 1995 WL 415802 at *2. Fifth, *Kohlhaas v. Morse*, 36 Ill. App. 2d 158 (4th Dist. 1962) concerned whether a plaintiff had ample opportunity to seek leave of court to add additional defendants and serve them before the expiration of a one year statute of limitations. In this case, the Complainant did not amend the complaint without leave of court. Rather, as was permitted in *City of Herrin*, it filed and served an Amended Notice of Electronic Filing. Sixth, *In re Estate of Rennick*, 181 Ill.2d 395 (Ill. 1998) concerned whether admissions made during a discovery deposition are admissible against a deceased party's estate, while *Keen v. Bump*, 310 Ill. 218 (Ill. 1923) considered whether to enjoin a person from utilizing a right of way across land. Neither case is applicable here. Seventh, this case does not concern the probate of a will as in *Floto v. Floto*, 213 Ill. 438 (Ill. 1904) or a suit to set aside a tax deed as in *Westcott v. Kinney*, 120 Ill. 564 (Ill. 1887).² Finally, unlike *People v. McGee*, 268 Ill. App. 3d 32 (2nd Dist. 1994), the exclusionary rule applicable in criminal search and seizure cases is not at issue in this case.

² The Complainant acknowledges the well-accepted principle that the parties cannot confer jurisdiction through waiver or consent.

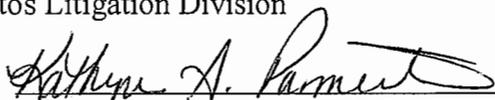
CONCLUSION

In *City of Herrin*, the Board established that the filing and service of an amended notice of filing containing the Section 31(c)(1) financing notification cures any deficiency that may exist if the notification is not contained in an original notice of filing. 1995 WL 415802 at *2. Here, the Complainant's October 31, 2012 notice of filing did not contain the Section 31(c)(1) financing notification, as this case seeks the imposition of civil penalties for which financing is arguably not available under the Illinois Environmental Facilities Financing Act. The Complainant cured any deficiency by filing an Amended Notice of Electronic Filing on February 27, 2013, containing the Section 31(c)(1) financing notification. Accordingly, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court deny Respondents' Motion to Strike Amended Notice of Electronic Filing and grant such other relief as this Court deems proper.

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

MATTHEW J. DUNN, Chief
Environmental Enforcement /
Asbestos Litigation Division

By:



KATHRYN A. PAMENTER
Assistant Attorney General
Environmental Bureau
69 W. Washington, 18th Floor
Chicago, Illinois 60602
(312) 814-0608

EXHIBIT A

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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AMENDED NOTICE OF ELECTRONIC FILING

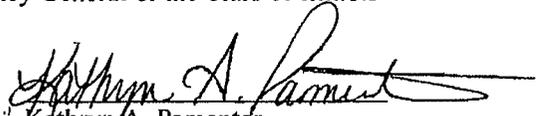
TO: Sheridan-Joliet Land Development, LLC and Sheridan Sand & Gravel Co.
 c/o Mr. Branko Vardijan c/o Kenneth Anspach, Esq.
 221 N. Washtenaw Avenue Anspach Law Office
 Chicago, IL 60612 111 West Washington Street, Suite 1625
 (Via Certified Mail) Chicago, Illinois 60602
 (Via Regular Mail)

PLEASE TAKE NOTICE that on October 31, 2012, we filed the initial Complaint in this matter with the Office of the Clerk of the Illinois Pollution Control Board, by electronic filing. A true and accurate copy of the Complaint was previously served upon you. Financing may be available, through the Illinois Environmental Facilities Financing Act, to correct the violations alleged in the Complaint.

Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney.

RESPECTUFLY SUBMITTED,

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

BY: 
 Kathryn A. Pamerter
 Environmental Bureau
 Assistant Attorney General
 69 W. Washington Street, #1800
 Chicago, Illinois 60602
 (312) 814-0608

CERTIFICATE OF SERVICE

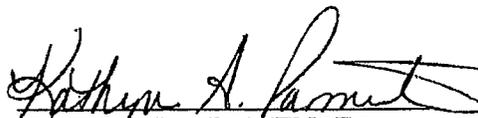
I, Kathryn A. Pamentor, an Assistant Attorney General, do certify that I caused to be served this 27th day of February, 2013, the attached Amended Notice of Electronic Filing upon the persons listed below by placing a true and correct copy in an envelope, first class postage prepaid, and depositing same with the United States Postal Service at 100 West Randolph Street, Chicago, Illinois, at or before the hour of 5:00 p.m.

Sheridan-Joliet Land Development, LLC and Sheridan Sand & Gravel Co.

c/o Mr. Branko Vardijan
221 N. Washtenaw Avenue
Chicago, IL 60612
(Via Certified Mail)

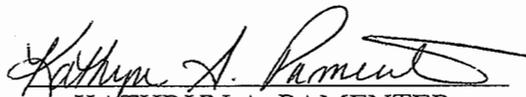
c/o Kenneth Anspach, Esq.
Anspach Law Office
111 West Washington Street, Suite 1625
Chicago, Illinois 60602
(Via Regular Mail)

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 W. Randolph Street
Chicago, Illinois 60601
(Via Regular Mail)


KATHRYN A. PAMENTER

CERTIFICATE OF SERVICE

I, KATHRYN A. PAMENTER, an Assistant Attorney General, do certify that I caused to be served this 12th day of April, 2013, the attached Notice of Filing and Complainant's Response to Respondents' Motion to Strike Amended Notice of Electronic Filing and Supporting Memorandum upon (a) Kenneth Anspach, Esq. by placing a true and correct copy in an envelope addressed as set forth on said Notice of Filing, first class postage prepaid, and depositing same with the United States Postal Service at 100 West Randolph Street, Chicago, Illinois, at or before the hour of 5:00 p.m. and (b) Bradley Halloran *via email*.


KATHRYN A. PAMENTER