ILLINOIS POLLUTION CONTROL BOARD February 21, 2002

| PEOPLE OF THE STATE OF ILLINOIS, |) | |
|----------------------------------|---|--------------------|
| Complainant, |) | |
| v. |) | PCB 02-21 |
| J & F HAULING, INC., |) | (RCRA Enforcement) |
| Respondent. |) | |

ORDER OF THE BOARD (by T.E. Johnson):

On November 9, 2001, the complainant filed a motion to deem facts admitted and for summary judgment. J & F Hauling, Inc. (J & F) has not filed a response to the motion. The Board addressed the motions in a January 10, 2002 order. In that order, the Board declined to rule on the motion for summary judgment until various service issues were resolved. In response to the Board's order, the complainant filed a motion to withdraw the motion for summary judgment with leave to re-file on January 29, 2002. To date, J & F has not filed a response to this motion.

In its motion to withdraw, the complainant agrees that the service of the complaint is an issue. To remedy this, the complainant asserts that it served a representative of the respondent with a second copy of the complaint on January 24, 2002. An affidavit of service is attached to the motion to withdraw. The complainant requests that the Board allow it to withdraw the motion to deem facts admitted and for summary judgment with leave to re-file if the respondent does not file an appearance and answer to the complaint within 60 days of January 24, 2002.

As noted, J & F did not respond to the motion to withdraw. Pursuant to Section 101.500(d) of the Board's regulations, a party may file a response to a motion within 14 days after service of the motion. If no response is filed within this time period, the party will be deemed to have waived objection to the granting of the motion. 35 Ill. Adm. Code 101.500(d).

The motion to withdraw the motion to deem facts admitted and for summary judgment is granted. Complainant is hereby given leave to file an additional motion for summary judgment in accordance with the Board's procedural rules.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on February 21, 2002, by a vote of 7-0.

Dorothy M. Gunn, Clerk

Illinois Pollution Control Board