

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED  
CLERK'S OFFICE

OCT 22 2003

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,     )  
Complainants,                             )  
                                               )  
vs.                                             )  
                                               )  
QC FINISHERS, INC., an Illinois Corporation,)  
Respondent.                                 )

PCB # 01-07  
(Enforcement-Air)

NOTICE OF FILING

To:

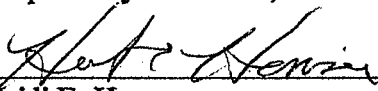
Ms. Paula Becker Wheeler  
Assistant Attorney General  
Office of the Attorney General  
188 West Randolph Street, 20th Floor  
Chicago, Illinois 60601

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

Clerk, Illinois Pollution Control Board  
100 W. Randolph Street  
State of Illinois Center  
Suite 11-500  
Chicago, Illinois 60601

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the original and nine copies of a REQUEST FOR BOARD RULING ON MOTION TO STRIKE AND MOTION FOR LEAVE TO FILE A REPLY AND REQUEST THAT THE BOARD REOPEN ITS SEPTEMBER 18, 2003 DECISION TO ADDRESS ALL TIMELY FILED PLEADINGS on behalf of QC Finishers, Inc., a copy of which is hereby served upon you.

Respectfully submitted,

  
Heidi E. Hanson

Dated October 17, 2003  
Heidi E. Hanson  
H. E. Hanson, Esq. P.C.  
4721 Franklin Ave, Suite 1500  
Western Springs, IL 60558-1720  
(708) 784-0624

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED  
CLERK'S OFFICE

OCT 2 2 2003

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS, )  
 )  
Complainants, )  
 )  
vs. ) PCB # 01-07  
 ) (Enforcement-Air)  
 )  
QC FINISHERS, INC., an Illinois Corporation, )  
 )  
Respondent. )

**REQUEST FOR BOARD RULING ON MOTION TO STRIKE AND MOTION  
FOR LEAVE TO FILE A REPLY and  
REQUEST THAT THE BOARD REOPEN ITS SEPTEMBER 18, 2003 DECISION  
TO ADDRESS ALL TIMELY FILED PLEADINGS**

NOW COMES Respondent, QC Finishers, Inc., by and through its attorney, H. E. HANSON ESQ. P.C., pursuant to 35 Ill Adm. Code 101.500(a) and (c) and asks the Board to Reopen its September 18, 2003 ruling to consider all timely filed pleadings.

1. On July 29, 2003 the Respondent filed a Motion for Reconsideration of the Board's June 19, 2003 Order. It asked, among other things that Board clarify several parts of its decision, reexamine a recent Illinois Supreme Court case that was contrary to cases cited by the opinion, and reinstate an affirmative defense which it had stricken based on the Complainant's improper attempt to revise its Complaint through its Motion to Dismiss Affirmative defenses.

2. On August 28, 2003 the Complainant filed an untimely Response to Respondent's Motion for Reconsideration.

3. On September 12, 2003 Respondent timely filed a Motion to Strike or in the Alternative, Motion For Leave to Reply to Complainant's Response to Respondent's Motion For Reconsideration (citing the fact that the Response was ten days late) and a Reply to Complainant's Response to Respondent's Motion for Reconsideration.

4. On September 18, 2003, the Board entered a three paragraph order which was received by Respondent's attorney on September 24, 2003. That order did not acknowledge the Motion to Strike or in the Alternative Motion for Leave to File a Reply, or the Reply itself. The order did acknowledge the Response, but did not indicate that it was untimely. The order did not address the requests for clarification or any of the issues raised.

5. The untimely Response should not have been accepted by the Board.
6. The Board's Order references the Response without mentioning that it was untimely and, without further discussion, it adopts the Response's blanket allegation that the Motion for Reconsideration did not "present any new evidence or assert a change in the law" thus it appears that the Response was read and considered.
7. Board Procedural rule 35 Ill. Adm. Code 101.522 provides that the Board may extend the time for filing a document only "for good cause shown", "on a Motion" and "after notice to the opposite party." There was no good cause shown for the late filing. There was no motion asking for permission to file late and there was no notice of such a motion. Therefore the Board should not have considered the Response.
8. The Motion for Reconsideration itself was unopposed on the merits. The only language in the Response that addressed the merits was the blanket statement quoted above. Because the Response was untimely filed pursuant to 35 Ill Adm. Code 101.500(d) even that objection should have been deemed to have been waived.
9. Of the eleven defenses addressed in the June 19, 2003 Board order the Motion for Reconsideration asked for clarification of the order on three defenses and asked the Board to reexamine its basis for ruling on several other defenses. The Board's September 19, 2003 order does not provide such clarification nor does it provide any additional discussion on the issues. The Board also did not explain how to distinguish its June 19, 2003 order from earlier and apparently contradictory rulings on several issues.
10. As a result of the Board's acceptance of the Response it did not rule on the following issues, among others, and thereby has left the parties uninformed as to the meaning and intent of its order:
  - a. When a facility is not in compliance with a rule but falls under an exemption or alternative to that rule, can the exemption or alternative be pled as a affirmative defense for the period after the exemption or alternative becomes applicable to the facility?
  - b. Can an affirmative defense to an allegation of violation of 35 Ill Adm. Code 212.316 be stricken on the grounds that Complainant could have, but did not, allege a violation of a different rule, in this case 35 Ill Adm. Code 212.302? And, did the Board intend to strike the affirmative defense to section 212.316 or did it intend to strike an affirmative defense to section 212.302? (Count IV)
  - c. Can a laches defense stand when a party has pled a delay in asserting a right or only a delay in bringing suit?

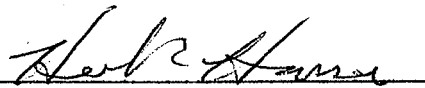
d. Which case establishes the elements of estoppel, the 1998 first district appellate case cited by the Board or the more recent 2001 Supreme Court Case cited in the Response to Motion to Dismiss Affirmative Defenses?

11. The Board's three paragraph ruling represents a departure from its usual practice. Typically the Board will rule on all timely filed pleadings and will often assist the litigants by clarifying its orders and distinguishing points of law that have been brought into question.

WHEREFORE Respondent respectfully requests that the Board,

- 1) strike the untimely Response or grant the Motion for Leave to File a Reply
- 2) reopen its ruling on the Motion for Reconsideration, and
- 3) consider and grant its Motion for Reconsideration.

Respectfully submitted,  
QC FINISHERS, INC.



By: H. E. Hanson Esq. P.C.

Dated October 17, 2003  
Heidi E. Hanson  
H. E. Hanson, Esq. P.C.  
4721 Franklin Ave, Suite 1500  
Western Springs, IL 60558-1720  
(708) 784-0624

**CERTIFICATE OF SERVICE**

I, the undersigned, certify that I have served the attached REQUEST FOR BOARD RULING ON MOTION TO STRIKE AND MOTION FOR LEAVE TO FILE A REPLY AND REQUEST THAT THE BOARD REOPEN ITS SEPTEMBER 18, 2003 DECISION TO ADDRESS ALL TIMELY FILED PLEADINGS by deposit in a U. S. Mailbox before 4:00 p.m. on October 17, 2003 upon the following persons:

One copy:

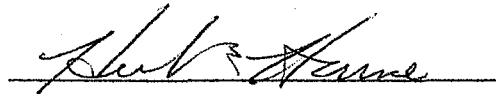
Paula Becker Wheeler  
Assistant Attorney General  
Office of the Attorney General  
188 West Randolph Street, 20th Floor  
Chicago, Illinois 60601

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

Original and nine copies:

Clerk, Illinois Pollution Control Board  
100 W. Randolph Street  
State of Illinois Center  
Suite 11-500  
Chicago, Illinois 60601

Dated: October 17, 2003

A handwritten signature in cursive script, appearing to read "Heidi E. Hanson", is written over a horizontal line.

Heidi E. Hanson  
H. E. Hanson, Esq. P.C.  
4721 Franklin Ave, Suite 1500  
Western Springs, IL 60558-1720  
(708) 784-0624

This filing is submitted on recycled paper.