

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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OCT 22 2003
STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS)	
)	
Complainant,)	
)	
vs-)	PCB No. 01-7
)	(Enforcement - Air)
QC FINISHERS, INC., an Illinois)	
corporation,)	
)	
Respondent.)	

TO: Heidi E. Hanson	Mr. Bradley Halloran
H.E. Hanson, Esq. P.C.	Hearing Officer
4721 Franklin Avenue	Illinois Pollution Control Board
Suite 1500	JRTC, Suite 11-500
Western Springs, IL 60558-	100 W. Randolph Street
	1720 Chicago, IL. 60601

NOTICE OF FILING

PLEASE TAKE NOTICE that we have today, October 22, 2003 filed with the Office of the Clerk of the Illinois Pollution Control Board an original and nine copies of the Complainant's Response to Respondent's 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, copies of which are attached herewith and served upon you.

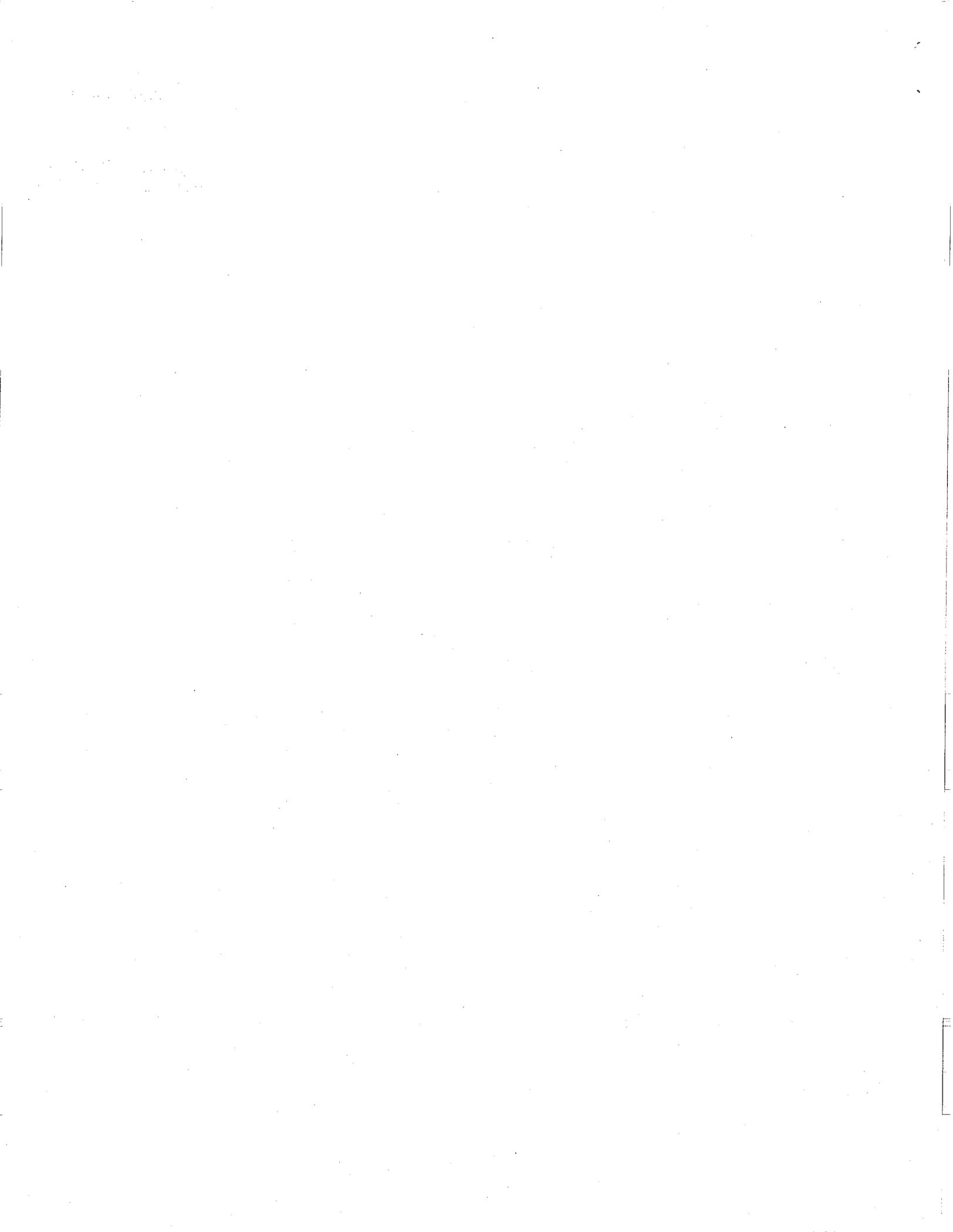
Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General of the
State of Illinois

BY: Paula Becker Wheeler
PAULA BECKER WHEELER
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Flr.
Chicago, IL 60601
(312) 814-1511

THIS FILING IS SUBMITTED ON RECYCLED PAPER



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 Respondent.)

PCB No. 01-7
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RESPONSE TO 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 Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and in response to Respondent's 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, pursuant to Sections 101.202, 101.520 and 101.902 of the Board's Procedural Regulations, 35 Ill. Adm. Code 101.202, 101.520 and 101.902, states that Respondent's Requests should be denied for the following reasons.

INTRODUCTION

1. The Board's June 19, 2003, Order ("June Order") addressed Complainant's Motion to Dismiss some of Respondent's Affirmative Defenses, granting it in part and denying it in part. On September 18, 2003, the Board entered an Order ("September Order") denying Respondent's Motion to Reconsider that June Order. The Respondent's current Request to the Board to reopen its September 18, 2003 decision

is merely a second motion to reconsider couched in slightly different language. The request to issue another ruling is unnecessary and redundant in view of the September Order.

2. Neither the June Order nor the September Order terminated the proceedings in this case, but rather allowed the proceedings to continue with discovery and litigation.

THE BOARD'S JUNE and SEPTEMBER ORDERS ARE NOT FINAL ORDERS AND THEREFORE ARE NOT RIPE FOR RECONSIDERATION

3. Section 101.202 Definitions for Board's Procedural Rules, 35 Ill. Adm. Code 101.202, defines "Final Order" as follows:

"Final Order" means an order of the Board that terminates the proceeding leaving nothing further to litigate or decide and that is appealable to an appellate court pursuant to Section 41 of the Act.

4. Neither the June nor September Orders are final orders.

5. The June Order allowed several of Respondent's Affirmative Defenses to stand and granted Complainant's Motion to Strike several other affirmative defenses.

6. The June Order addresses the motion brought up by the parties during litigation of this case related to the ongoing litigation. The motion did not seek to end "...the proceeding leaving nothing further to litigate...", and the June Order was not meant to, and does not, end the proceedings. The September Order denied a motion to reconsider and did not end the proceedings.

7. Section 101.520(a) of the Board's Procedural Rules and Regulations, 35 Ill. Adm. Code 101.520(a), states as follows:

- a) Any motion for reconsideration or modification a final Board order must be filed within 35 days after the

receipt of the order(emphasis added).

8. Since the June and September Orders are not a final orders, they are not ripe for reconsideration.

Wherefore, Complainant requests, pursuant to Sections 101.202 and 101.520 of the Board's Procedural Regulations, 35 Ill. Adm. Code 101.202 and 101.520, that the Board deny the Respondent's Requests.

COMPLAINANT ADOPTS AND INCORPORATES EARLIER ARGUMENTS

9. Should the June and September Orders be construed as final orders, or if a different interpretation is given to the Board's Procedural Regulations, then Complainant objects to and contests Respondent's Requests for a Ruling and to Reopen the September Order.

10. Complainant adopts and incorporates the following pleadings, motions, and responses previously filed with the Board: Complainant's Complaint, Complainant's Motion to Dismiss Affirmative Defenses, and Complainant's Response to Respondent's Motion to Reconsider the Board's Order of June 19, 2003.

11. Section 101.902 under Subpart I: Review of Final Board Opinions and Orders, 35 Ill. Adm. Code 101.902 states as follows:

Motions for Reconsideration

In ruling upon a motion for reconsideration, the Board will consider factors including new evidence, or a change in the law, to conclude that the Board's decision was in error.

12. Respondent, in its prior Motion for Reconsideration, and in its new Requests, does not provide any new evidence, or assert a change in the law.

Wherefore, Complainant requests, pursuant to Sections 101.902 and 101.520 of the Board's Procedural Regulations, 35 Ill. Adm. Code

101.902 and 101.520, that the Board deny the Respondent's Requests for Ruling and to Reopen the September Order.

CONCLUSION

For the foregoing reasons, the Complainant respectfully requests that Respondent's Request for Board Ruling and Request to Reopen Its September 18, 2003 Decision be denied, with prejudice.

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN, Attorney
General of the State of Illinois

By: Paula Becker Wheeler
PAULA BECKER WHEELER
Assistant Attorney General
Attorney for Complainant

Environmental Bureau
188 W. Randolph St., 20th Fl.
Chicago, Illinois 60601
(312) 814-1511

CERTIFICATE OF SERVICE

I, Paula Becker Wheeler, an Assistant Attorney General in this case, do certify that on this 22nd day of October, I caused to be served the foregoing Notice of Filing and Complainant's Response to Respondent's 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, to those named within by personal service to Mr. Halloran and by U.S. Mail to Ms. Hanson by depositing same in the U.S. Mail depository located at 188 West Randolph Street, Chicago, Illinois, in an envelope with sufficient postage prepaid



PAULA BECKER WHEELER

