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SEP 13 2004

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

STATE OF ILLINOIS
Pollution Control Board

Lisa Madigan
ATTORNEY GENERAL

September 9, 2004

The Honorable Dorothy Gunn
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph
Chicago, Illinois 60601

Re: **People v. Jersey Sanitation Corporation**
PCB No. 97-2

Dear Clerk Gunn:

Enclosed for filing please find the original and ten copies of a NOTICE OF FILING and MOTION FOR SANCTIONS, REQUEST TO CLOSE RECORD in regard to the above-captioned matter. Please file the original and return a file-stamped copy of the document to our office in the enclosed, self-addressed, stamped envelope.

Thank you for your cooperation and consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jane E. McBride".

Jane E. McBride
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

JEM/pp
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
)
JERSEY SANITATION CORPORATION,)
an Illinois corporation,)
)
Respondent.)

RECEIVED
CLERK'S OFFICE
SEP 13 2004
STATE OF ILLINOIS
Pollution Control Board

PCB NO. 97-2
(Enforcement)

NOTICE OF FILING

To: Stephen F. Hedinger
Attorney at Law
2601 South Fifth Steet
Springfield, IL 62703


PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, MOTION FOR SANCTIONS, REQUEST TO CLOSE RECORD, copies of which are attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,
Attorney General of the
State of Illinois

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

BY: 
JANE E. McBRIDE
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: September 9, 2004

CERTIFICATE OF SERVICE

I hereby certify that I did on September 9, 2004, send by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING and MOTION FOR SANCTIONS, REQUEST TO CLOSE RECORD

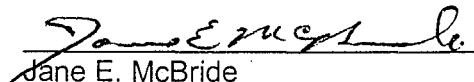
To: Mr. Stephen Hedinger
Hedinger Law Office
2601 South Fifth Street
Springfield, Illinois 62703

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

To: Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601

A copy was also sent by First Class Mail with postage thereon fully prepaid

To: Carol Sudman
Hearing Officer
Pollution Control Board
1021 N. Grand Avenue East
Springfield, Illinois 62794


Jane E. McBride
Assistant Attorney General

This filing is submitted on recycled paper.

SEP 13 2004

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)

Complainant,)

vs.)

JERSEY SANITATION CORPORATION,)
an Illinois corporation,)

Respondent.)

PCB No. 97-2

**MOTION FOR SANCTIONS,
REQUEST TO CLOSE RECORD**

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, and moves the Board, pursuant to Section 101.800 of the Board's Procedural Rules, to grant sanctions in the form of the closing the record in this matter, due to the Respondent's failure to adhere to the post-trial briefing schedule set forth in a Hearing Officer Order dated July 19, 2004. The Respondent was to file its brief on August 2, 2004, and to this date has failed to file a brief. The Complainant states the following in support of its motion:

1. On January 13, 2004, the Hearing Officer issued her Hearing Report in this matter and set the post-trial briefing schedule as follows: Complainant's brief was due on March 15, 2004, Respondent's brief was due on April 26, 2004, and Complainant's reply brief, if any, was due on May 10, 2004.

2. On March 1, 2004, the parties contacted the Hearing Officer to request an additional three weeks to file post-hearing briefs. The Hearing Officer granted the request. The Complainant's brief was due on April 5, 2004 and the Respondent's brief was due on May 17, 2004. Complainant's reply brief, if any, was due May 31, 2004.

3. On April 2, 2004, Complainant contacted the Hearing Officer after speaking with counsel for the Respondent, and requested an additional two weeks to file its post-hearing brief. Counsel for the Respondent had indicated he had no objection to the additional extension

of time. The Hearing Officer granted Complainant's request. Complainant's brief was now due April 19, 2004, and respondent's brief was due June 1, 2004.

4. Complainant filed its brief on April 19, 2004. Upon requests for extensions of time made prior to the Complainant's deadline, Complainant received a total of 5 additional weeks within which to file its brief.

5. On July 16, 2004, a month and a half after its brief was due, Respondent contacted the Hearing Officer to request an extension of its deadline for its post-hearing brief. Although the last Hearing Officer order indicated no further extensions would be granted, Respondent's attorney indicated that he could not meet the current deadline for various reasons. The Hearing Officer granted an additional extension. Respondent's brief was now due on August 2, 2004 and the People's reply was due on August 16, 2004.

6. As of this date, September 9, 2004, Respondent has failed to file its brief. The amount of additional time that has passed since Respondent's June 1, 2004 deadline is three months and 8 days, or approximately 13 weeks. This amount of time far exceeds the five additional weeks granted the Complainant upon the Complainant's timely motions for extensions of time.

7. In the Hearing Officer's order of July 19, 2004, the Hearing Officer noted that the hearing in this matter had been held 10 months prior to the date of the current order. Another two months has now lapsed. The hearing in this matter was initiated on September 23-24, 2003 and concluded on January 13, 2004.

8. Complainant is prejudiced by the delay in that a significant amount of time has passed since this case has been presented for hearing and the first brief drafted. The Complainant will now be forced to re-familiarize itself, once again, after the passage of the time, with the extensive record that exists in this matter, including all facts and arguments.

9. The history of this proceeding shows that the Respondent previously caused

delay, even during the hearing. The hearing was continued on September 24, 2004, due to the Respondent's request for additional time for its engineering expert to review exhibits. The night before the continuance, Respondent identified two witnesses it intended to call to testify, neither of which has been previously disclosed. The next day, Complainant objected to the new witnesses. Pre-hearing disclosures of the parties' witnesses, filed in this matter, which clearly showed that the new witnesses had not been previously disclosed, were offered and admitted as exhibits. The Hearing Officer refused to sustain Complainant's objection but granted Complainant's request to depose the new witnesses and continued the matter. The matter was continued until January 13, 2004 to allow time for disclosure of the new witnesses' opinions and the scheduling of depositions.

10. Counsel for Complainant will be out of town for significant portions of October. Counsel for the Complainant has repeatedly attempted to adjust her schedule in order to reserve time to draft a reply brief, and has been in contact with individuals from the Illinois EPA who might review or assist in the drafting of a reply brief so as to assure their availability during the briefing schedule. It has become extremely cumbersome to constantly attempt to reserve time for the drafting and review of a reply brief, when the Respondent has consistently failed to adhere to the briefing schedule set by the Hearing Officer.

WHEREFORE, for the foregoing reasons, Complainant respectfully requests that the Board acknowledge Respondent's failure to adhere to the briefing schedule set in this matter by Hearing Officer order, and order the record in this matter closed.

Respectfully submitted,

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

MATTHEW J. DUNN, Chief
Environmental Enforcement Division

BY:



JANE E. MCBRIDE
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
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