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**OCT 19 2004**

**STATE OF ILLINOIS**  
**Pollution Control Board**

**OFFICE OF THE ATTORNEY GENERAL**  
STATE OF ILLINOIS

**Lisa Madigan**  
ATTORNEY GENERAL

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, MOTION FOR LEAVE TO REPLY TO RESPONDENT'S RESPONSE TO MOTION FOR SANCTIONS and COMPLAINANT'S REPLY TO RESPONDENT'S RESPONSE TO MOTION FOR SANCTIONS 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 cursive script, appearing to read "Jane E. McBride".

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

JEM/pp  
Enclosures

**RECEIVED**  
CLERK'S OFFICE

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

**OCT 19 2004**

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

**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 LEAVE TO REPLY TO RESPONDENT'S RESPONSE TO MOTION FOR SANCTIONS and COMPLAINANT'S REPLY TO RESPONDENT'S RESPONSE TO MOTION FOR SANCTIONS, 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: October 15, 2004

**CERTIFICATE OF SERVICE**

I hereby certify that I did on October 15, 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, MOTION FOR LEAVE TO REPLY TO RESPONDENT'S RESPONSE TO MOTION FOR SANCTIONS and COMPLAINANT'S REPLY TO RESPONDENT'S RESPONSE TO MOTION FOR SANCTIONS

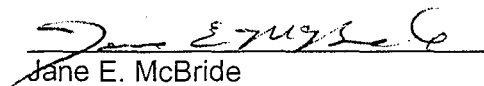
To: Mr. Stephen Hedinger  
Hedinger Law Office  
2601 South Fifth Street  
Springfield, Illinois 62703

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.

OCT 19 2004

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
vs. ) PCB No. 97-2  
)  
)  
JERSEY SANITATION CORPORATION, )  
an Illinois corporation, )  
)  
Respondent. )

**MOTION FOR LEAVE TO REPLY TO RESPONDENT'S RESPONSE TO MOTION FOR  
SANCTIONS**

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, and respectfully requests leave to reply to Respondent's response to motion for sanctions, on the following grounds.

1. In its response, for the first time, Respondent blatantly claims, in paragraph 12, that "Complainant is directly responsible for a large share" of Respondent's delay. The basis for this statement is set forth in the paragraphs preceding paragraph 12. Much of what is included in the response, is presented in a manner first articulated in this response, Complainant should be allowed to reply to Respondent's assertions as articulated in the response.

2. It is Complainant's position that a number of the assertions, even factual assertions, set forth in Respondent's response are incorrect. Complainant should be allowed an opportunity to provide clarifications it deems merited.

3. Complainant believes it has been significantly prejudiced by Respondent's delay, not only in the instance of its failure to file its brief in accordance with Hearing Officer orders, but by the pattern and practice of delay undertaken by the Respondent throughout this proceeding. Complainant, thus, should be allowed an opportunity to address Respondent's assertions as articulated in the response.

4. In the interest of economy and efficiency, in conjunction with this motion for leave to reply, Complainant submits its reply.

WHEREFORE, for the foregoing reasons, Complainant respectfully requests leave to reply to Respondent's response to Complainant's motion for sanctions.

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  
(217) 782-9031

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED  
CLERK'S OFFICE

OCT 19 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

COMPLAINANT'S REPLY TO RESPONDENT'S RESPONSE TO MOTION FOR SANCTIONS

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, and hereby submits its reply to Respondent's response to Complainant's Motion for Sanctions.

Complainant states as follows:

1. On October 8, 2004, Complainant received service, by US mail, of Respondent's response to Complainant's motion for sanctions. Counsel for Complainant was out of the office due to a long-scheduled obligation out of town, from October 1, 2004 until October 14, 2004.

2. In Paragraph 2 of Respondent's response to Complainant's motion for sanctions. Respondent states: Just four days earlier, on September 19, 2003 (three months after the hearing officer had established the schedule), Complainant tendered to Respondent an "amended" opinion witness disclosure that for the first time raised an issue concerning groundwater at the facility". This statement is completely incorrect.

3. Complainant's disclosures of witnesses have been entered in the record as Complainant's Exhibits 17 and 19. Further, the groundwater issues that were the subject of Complainant's Exhibit 16, which is the exhibit provided to Respondent on or about September 19, 2003, are set forth in Count I of the Second Amended Complaint, filed January 3, 2001 and subsequent disclosures on December 6, 2000 and August 13, 2003. Count I of the first amended and original complaint also concerned the groundwater violations alleged in this

matter.

4. Disclosures included in Complainant's Exhibit 17, which was submitted to Respondent on December 6, 2000, included, on page 3 of the disclosure, the following statement associated with the witness disclosure of Karen Nelson: "The subject matter will be in regard to the findings in the IEPA "Groundwater Sampling Inspection/Compliance Review Report" dated October 24, 1994 conducted at Jersey Sanitation Corporation on May 17, 18, and 19, 1994 and subsequent groundwater record reviews of IEPA field operations section files that serve to update the violations outlined in the above-mentioned report." The 1994 report findings included the upgradient well issue as well as alleged violations, including the exceedance of groundwater quality standards.

5. Complainant's supplemental disclosure was filed on August 13, 2003. No pre-trial discovery schedule was set in this matter. However, Respondent had ample time to depose Complainant's witnesses. Respondent never objected to the timing of the disclosures, or requested or scheduled a single deposition, prior to the date of hearing.

6. In paragraphs 2, 4 and 11 of Respondent's response to Complainant's motion for sanctions, Respondent referenced information contained in the September 19, 2003 exhibit transmission to Respondent as a submission of a "new issue". Complainant addressed Respondent's characterization of this information as a "new issue", in paragraph 9 of Complainant's Objection to Respondent's motion for extension of time to file a response to motion for sanctions, filed in this matter on September 27, 2004, entered September 30, 2004. Complainant hereby incorporates paragraph 9 of its objection, herein, in partial reply.

7. In paragraph 4 of its response, Respondent indicates that the depositions Complainant requested and conducted of Respondent's groundwater opinion witnesses were the only depositions Complainant conducted in the case. In reply, as is obvious from the many

exhibits entered in this matter, and the extent to which groundwater issues are addressed in Complainant's brief, the groundwater issues are the remaining outstanding issues completely unresolved in this case that were the subject of the greatest controversy in this matter. Thus, it makes perfect sense for the Complainant to conduct depositions of Respondent's groundwater witnesses only. Respondent failed to identify or disclose any groundwater witnesses prior the date of hearing.

8. Respondent's sole disclosure of witnesses prior to the September 23, 2003 hearing date was a disclosure that exists in the record as Complainant's Exhibit 18. This disclosure was made on September 11, 2003, 12 days before the hearing. The only technical witnesses disclosed, other than the IEPA inspector, were Tracey Kelsey and Andy Rathsack. Neither disclosure indicates they would testify relevant to groundwater issues. Ms. Kelsey was to testify concerning "all matters relating to survey issues." Mr. Rathsack was to testify to "the history and background of the Jersey Sanitation Landfill, the permitting history and background of the Jersey Sanitation Landfill, matters pertaining to surveys and boundary control, and the history and permitting requirements and industry standards during the relevant time frame of closure/post-closure of this landfill."

9. It is obvious from the record in this case that the groundwater violations and issues were by no means "new issues" by the date of hearing in this matter. Nonetheless, somehow, for whatever reason, Respondent considered itself surprised, at the time of hearing, by the groundwater issues in this matter. This is despite the fact these issues and violations have, since the initiation of this matter, been set forth and alleged in the very first count of the original and subsequent complaints. They were the subject matter of disclosures submitted in December 2000. They were the subject matter of many of the numerous documents produced for and delivered to Respondent on October 24, 2002. (See Exhibit A, attached).



10. Respondent's characterization that the groundwater issues were "new issues" at the time of hearing is simply a ruse. It is a ruse to detract attention from the fact that Respondent failed to conduct discovery depositions in this matter and failed to effectively focus on the key issues remaining in this case prior to hearing. At the end of the day, it is not inconceivable that the Respondent might be surprised at hearing given that it failed to conduct depositions and perhaps failed to properly review other documents produced and delivered to its door. But, such surprise is not the fault of Complainant. All responsibility for any surprise Respondent might have experienced rests solely with the Respondent.

11. Throughout this proceeding, it has been obvious that Respondent is minimizing the expenditure of resources on this matter. Such was obvious from the manner in which the Respondent's experts' groundwater testimony was pieced together, in which they relied only on factual information available from the neighboring landfill given that no investigation had ever been done at the subject facility. As set forth in Complainant's brief, this practice is reflected in the manner in which Respondent handled the two landfills. It expended money and resources on the neighboring landfill but not the subject landfill. This practice continues to this day, in that the Respondent is trying to shift the blame for its own failure to expend time and resources defending this case, to the Complainant.

12. In paragraphs 7, 9 and 10 of its response, it indicates its contention that Complainant's brief was not actually "filed" until September 29, 2004. Complainant addresses this assertion in paragraph 10 of its objection to Respondent's motion for extension of time to respond to the motion for sanctions, and hereby incorporates paragraph 10 of its objection, herein, in partial reply to Respondent's contention of a September 29, 2004 filing date. Further, Complainant states that in formal discussions concerning the briefing schedule with the Hearing Officer, Respondent did not contend its brief was not due, so as to raise the issue for a ruling.

Respondent had ample time to file a written objection or request a ruling prior to the date Complainant filed its motion for sanctions, but never did so.

13. In paragraph 10 of Respondent's response, Respondent makes vague reference to the fact the transcript from the first hearing dates was available, according to the Respondent's count, 6 months as of the date of the Complainant's filing of its brief. Respondent makes the statement that "ninety percent of this case's evidence was submitted" during the first hearing dates. Contrary to the inferences contained within Respondent's argument, Complainant contends that the groundwater issues in this matter hinged on testimony elicited on the January 13, 2004 hearing date. Much of Complainant's brief is dedicated to groundwater issues.

14. In paragraph 12 of its response, Respondent claims that "Complainant is directly responsible for a large share" of Respondent's delay. As is obvious from the foregoing 14 paragraphs and Complainant's objection to Respondent's request for an extension of time to respond to the motion for sanctions, Complainant is not responsible for one hour, one minute, not even one second of Respondent's delay.

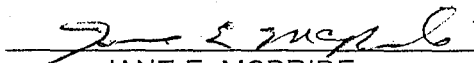
WHEREFORE, on the foregoing grounds, Complainant respectfully requests that the Board grant Complainant's Motion for Sanctions, deny Respondent's request for additional time to file its response brief, and order the record in this matter closed.

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  
(217) 782-9031



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Jim Ryan**  
ATTORNEY GENERAL

October 24, 2002

Mr. Steve Hedinger, Esq.  
Law Offices of Stephen Hedinger  
1225 South Sixth Street  
Springfield, IL 62703

Re: *People v. Jersey Sanitation Corporation*  
PCB 97-2

Dear Steve:

With this letter I am transmitting documents responsive to your Second Request for Production of Documents in the above-referenced matter.

Our original response to this request was filed April 30, 2001. At that time I informed you the documents were available for inspection at the Office of the Attorney General. In that you have not made arrangements to come to the office to review the documents, I am delivering copies of the discoverable documents to your office. I have enclosed a privilege log to accompany the production.

The documents are organized as follows:

1. A set of documents consisting of discoverable documents from the Illinois EPA's field file, records unit file (a/k/a division file), compliance section file and permits file in chronological order.
2. A set of documents representing the discoverable documents from the Bureau of Land's Groundwater file for Jersey Sanitation. Included with the production are microfiche slides. These are copies that you may retain. (This does not include the documents provide by Jersey via cover letter dated October 23, 2002.)
3. A set of documents consisting of discovered documents from the Attorney General's Office ("AGO") correspondence file, in chronological order.

Exhibit A

Mr. Steve Hedinger, Esq.

October 24, 2002

Page 2

4. A set of documents from the Attorney General's Office pleadings file: one group in chronological order for the years 1992-1999, one group in chronological order for the year 2000, one group in chronological order for the year 2001, and one group in chronological order for the year 2002. For this set, I did not copy and include hearing officer and Board orders dated from mid-2001 to the present.
5. A set of documents from the Illinois EPA files and AGO files that consists of corporate, financial and financial assurance information regarding Jersey Sanitation Corporation.
6. A set of documents from the IEPA's records unit and compliance section that consists of citizen complaints. Names and addresses included on the citizen complaint forms contained within this file and also from the other agency files have been redacted.
7. A set of documents that consist of diagrams, maps, and drawings from the Illinois EPA files and the AGO files.
8. A set of documents that consists of newspaper articles from the IEPA files and AGO files.
9. Documents contained with an AGO file called "Permits".
10. Documents from an AGO file called "Recent Groundwater Documentation".
11. Groundwater reports that exist in the IEPA field file and in the AGO file.

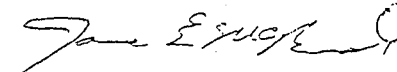
I have not included any documents contained within the AGO Jersey Sanitation enforcement files that are from the permit appeal matter. In that you are handling the appeal, I trust you have a copy of all the appeal documents.

In that this document production was conducted in February and March of 2001, I have asked the Illinois EPA to supplement the production. The production I am transmitting with this letter is current to today's date for the Attorney General's Office files. Some Illinois EPA documents that have come into being since February and March 2001 are contained within the

Mr. Steve Hedinger, Esq.  
October 24, 2002  
Page 3

AGO files and thus are being produced from the AGO files. I provided an affidavit for the production that is being transmitted with this letter, at the time of the April 30, 2001 filing.

Sincerely,



Jane E. McBride  
Assistant Attorney General  
(217) 782-9033

cc: Greg Richardson, Esq., IEPA  
David Jansen, IEPA, Springfield Regional Office