OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

April 1, 2005

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 COMPLAINANT'S RESPONSE TO RESPONDENT'S MOTION FOR RECONSIDERATION 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,

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.	)	**PCB NO. 97-2**
	)	**(Enforcement)**
JERSEY SANITATION CORPORATION, an Illinois corporation,	)	
	)	
	)	
Respondent.	)	

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, COMPLAINANT'S RESPONSE TO RESPONDENT'S MOTION FOR RECONSIDERATION, 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: April 1, 2005

CERTIFICATE OF SERVICE

I hereby certify that I did on April 1, 2005, 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 COMPLAINANT'S RESPONSE TO RESPONDENT'S MOTION FOR RECONSIDERATION

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 Webb
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.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

COMPLAINANT'S RESPONSE TO RESPONDENT'S MOTION FOR RECONSIDERATION

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS (hereinafter, the "Complainant") by LISA MADIGAN, Attorney General of the State of Illinois, and hereby responds to Respondent Jersey Sanitation Corporation's (hereinafter, the "Respondent") Motion for Reconsideration of the Order entered by the Illinois Pollution Control Board on February 3, 2005, as follows:

1. The Board's order was dated February 3, 2005, and received by Complainant on February 9, 2005. The Complainant received the Respondent's motion for reconsideration on March 21, 2005. The motion is dated March 18, 2005. The motion is dated 37 days after the Complainant received the Board order, and 42 days after the order was issued by the Board. The Complainant received the motion 40 days after the Complainant received the Board Order. Pursuant the Section 101.300 of the Board's Procedural Rules, 35 Ill. Adm. Code 101.300, service by U.S. Mail is presumed completed four days after mailing. Pursuant to Section 101.520 of the Board's procedural rules, 35 Ill. Adm. Code 101.520, a motion for reconsideration is to be filed within 35 days after receipt of the order. Complainant objects to the motion on the basis that it is untimely. It is late. The actual filing date exceeded the time limit for filing such a motion, as set forth in 35 Ill. Adm. Code 101.520.

2. Complainant responds to the Respondent's motion, as follows:

(A) Illinois decisions reflect the generally acknowledged authority of the Board to take whatever steps are necessary to rectify the problem of pollution and to correct instances of pollution on a case by case basis. *Discovery South Group, Ltd. v. The Pollution Control Board*, 275 Ill. App. 3d 547 (1st Dist., 1995), 656 N.E. 2d 51; *W.F. Hall Printing Co. v. Environmental Protection Agency*, 16 Ill App. 3d 864, 868 (1st Dist., 1973), *Mystik Tape v. Illinois Pollution Control Board*, 16 Ill. App. 3d 778 (1st Dist. 1973);

(B) Item E in the prayer for relief in every count of the Second Amended Complaint, filed in this matter on January 3, 2001, is a request for costs and attorney's fees; and item E of the Complainant's "Conclusion" section of its first post-hearing brief states as follows : "Award Complaints its costs and reasonable attorney fees. A calculation of said costs and fees shall be provided with Complainant's reply brief." Complainant's first post-hearing brief included multiple calculations of the ongoing and repeat nature of the various violations. Complainant's reply brief included an affidavit from counsel, attesting to the expenditure of at least 154 hours of time on the case. The Board's decision astutely pointed out that it was awarding attorney fees for the "first" 154 hours spent enforcing this matter. It is true that the actual time spent on this case by Complainant's attorney amounts to multiples of 154. Respondent, by failing to raise any objection in its response brief to Complainant's previous prayers and Complainant's assertion in Item E of the conclusion of Complainant's first brief, waived any claim it might have regarding attorney fees. It is Complainant's position that Respondent has no claim,

because it certainly cannot legitimately challenge the fact that Complainant's counsel has spent at least 154 hours on this matter;

(C) Any and all discretions regarding facts that appear in the recitation of facts in the Board's order, asserted in items 4 (a - f) of the Respondent's motion compared to that which appeared in the record are either (1) irrelevant to the standards that are to be applied in this matter, or (2) in reality do not constitute "facts" but are instead a perpetuation of the erroneous statements and flawed arguments that have been repeatedly put forth by the Respondent in this matter.

(D) Respondent's attempt at mockery of this enforcement action in paragraph 5 of the motion is insulting to the Board and this state's interest in protection of the environment, and it is repulsively arrogant. It is the same arrogance this Respondent has displayed throughout the years, refusing to address groundwater issues at the site for 13 years, repeatedly (and currently) failing to meet financial assurance requirements, mounting legal challenges and yet simultaneously claiming insolvency, and taking every advantage of the full 200 acre property to advance the landfill business it purchased and yet only starting to seriously bring the Jersey Sanitation Landfill into compliance once RSC was available at the neighboring site to manage the old existing site in 1995. The Respondent did everything according to its own agenda, in its own good time. However, there has never been time, and the time has never come, for the Respondent to address the groundwater issues at the site. Now arsenic levels are increasing in magnitude. The arsenic levels exceed the state's groundwater standards. This still has not

stirred the Respondent into action. It is very apparent that the Respondent is not going to address the arsenic, or the other groundwater standard exceedences, until it is made to do so. The Board is certainly within its power and authority to order a remedy that will address issues of non-compliance at the site. The Respondent claims the groundwater issues at Jersey Sanitation Landfill have been fabricated. What an absurd claim! There is no arguing with the sample results that are contained in the record of this matter. They exceed applicable standards, and have for years. This fact remains undisputed in this case. It is sampling that was conducted and submitted by the Respondent, and has not been challenged by the Respondent. As set forth by the Board in its order, the long record of the Respondent's failure to bring the subject landfill into compliance is a record of violation that justifies millions of dollars in penalties. The penalty assessed in this matter is more than fair. In fact, much of the penalty calculation involved groundwater compliance cost avoidance and financial assurance cost avoidance. The record shows that Anderson Engineering provided Respondent with a cost estimate of a mere $9,000.00 to conduct a groundwater assessment, something that the Respondent was under an obligation to conduct pursuant to permit requirements, and **Respondent declined to do it!** The penalty is justified, and, as stated above, it is more than fair.

<u>The Board has authority to take whatever steps are necessary to rectify the problem of pollution and to correct instances of pollution on a case by case basis</u>

3. As stated above, complete with citations, Illinois decisions have generally acknowledged authority of the Board to take whatever steps are necessary to rectify the

problem of pollution and to correct instances of pollution on a case by case basis.

In the instant matter, Complainant put on evidence, which was supported by the testimony of Respondent's experts, as to what steps needed to be taken to bring the landfill into compliance. The Board's remedy is consistent with the factual data and the expert testimony presented in this matter. In the case of *Discovery South Group*, 275 Ill. App.3d at 559, the Court held, in upholding the remedy set forth in the Board's order, that "the Board's action was not arbitrary or capricious since it was based upon expert evidence provided by both parties. We uphold the Board's remedy." Further, in the case of *Kaeding v. The Pollution Control Board,* 22 Ill.App.3d 36 (2d Dist. 1974), 316 N.E.2d 788, the court held that "The Pollution Control Board is conferred with those powers that are reasonably necessary to accomplish the legislative purpose of the administrative agency including imposition of cease and desist orders and monetary penalties for violation of the Environmental Protection Act, and *thus the State's attorney does not have to bring the action to enforce the provisions of the Act. (*Emphasis added.*)* The court based its holding on the case of *City of Waukegan v. Pollution Control Board*, 57 Ill.2d 170 (1974), 311 N.E.2d 146, wherein it was held that the legislature has conferred upon the Illinois Pollution Control Board those powers that are reasonably necessary to accomplish the legislative purpose of the administrative agency; specifically the imposition of monetary 'penalties' for violation of the Environmental Protection Act, and necessarily the power to order compliance with the Act. In none of these cases was the remedy a simple cease and desist order. All of the orders that were the subject of the courts' decisions were orders that required specific compliance actions, that is, they were all of the nature of a mandatory injunction. The orders involved measures necessary to achieve compliance.

The decision in *People v. Agpro, Inc.*, 2005 WL 246213 (Ill.) cited by the Respondent, is not applicable to Board decisions. Further, as stated by the Respondent, the holding in *Agpro*

has been addressed by the legislature and the statute has been amended to provide for an injunction, "prohibitory or mandatory," to restrain violation of the Act. Thus it is clear that it is the legislature's intent that the tribunals enforcing the Act be able to order compliance. *Agpro* is the only authority cited by Respondent. The vacuum, that is, non-existence, of truly applicable case law is indicative that Respondent's position is not and cannot be supported by case law, and is patently flawed and wholly erroneous.

Complainant asserted its claim for attorney's fees in the Second Amended Complaint filed in January of 2001, and also in its first post-hearing brief.

4. Complainant stated its argument with regard to Respondent's assertion that the Board wrongly awarded attorney's fees, in paragraph 2(B) above, and will not restate it here.

Any and all asserted discretions regarding facts that appear in the recitation of facts in the Board's order, compared to that which appeared in the record are either (1) irrelevant to the standards that are to be applied in this matter, or (2) in reality do not constitute "facts" but are instead a perpetuation of the erroneous statements and flawed arguments that have been repeatedly put forth by the Respondent in this matter.

5. In response to Paragraph 4(a) of the Respondent's motion, it is wholly irrelevant to any finding of violation in this matter as to when the people that constitute the shareholders of the Respondent corporation established residency in the vicinity of the Jersey Sanitation Landfill – completely and wholly irrelevant. The time period of the violations is after the Respondent corporation took control of the subject facility. The Respondent's motive for purchasing property, a portion of which constitutes the subject landfill, is disputed in this matter. The condition of the landfill prior to the Respondent's taking control of it is irrelevant to the fact of the violation once the Respondent had possession, control and ownership of the subject landfill. The Respondent's length of residency and motives are not relevant to any aspect of this case, not to the Section 33(c) factors and not to the Section 42(h) factors, which is why Complainant objected to the testimony and evidence in the first place. Nonetheless, the evidence was allowed to be heard and entered in the record and thus Complainant presented

evidence that disputed these contentions.

The statement cited by Respondent in Paragraph 4(a) of its brief is with regard to a sentence included in the Board's finding concerning the Section 33(h) factors, in particular factor (iii), the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved. The issue of any priority of location is certainly negated by the fact the Respondent purchased the landfill and operated the landfill in a gross state of non-compliance for five years. As stated in Complainant's brief, Jersey Sanitation Landfill may have no longer been a nuisance to the shareholder neighbors after they bought it, since it now was their landfill, but the record shows that non-shareholder neighbors continued to submit complaints to the Illinois EPA after ownership of the landfill was transferred. The landfill existed in gross non-compliance with uncovered refuse and leachate flowing into the nearby creek for years, in fact from 1989 to 1994-1995. The record contains very explicit photographs, written document and testimony regarding the condition of the subject landfill during the years of 1989 through 1994-1995.

As stated above, the motive of this Respondent in purchasing the 200 acre parcel of land is in dispute in this matter. There is nothing innocent about the Respondent. The shareholders were in the landfill business. As is clear from the record, they owned multiple landfills.

Further, the record strongly contests the notion that the Respondent has "successfully closed" the Jersey Sanitation Landfill.

The Board found in this matter, that this landfill has existed out of compliance and in violation of the Environmental Protection Act as specifically described in its order of February 3, 2005, for 15 years. The order is supported by the record.

6. In response to Paragraph 4(b) of Respondent's motion, Respondent again states its position that the landfill was granted closure effective September 30, 1994 and thus, by a

miraculous leap of faith, was therefore in compliance with all applicable environmental provisions on that date. Procedurally, in fact, and on any imaginable basis, this statement is erroneous and cannot and is not supported by the provisions of the Illinois Environmental Protection Act, any regulations promulgated thereunder, or case law. Complainant's response to this argument appears on pages 32 through 34 of its reply brief, and will be repeated here for the benefit of this response:

> On pages 5 and 6 of its response brief, Respondent appears to be making the argument that at the time the Illinois EPA acknowledged receipt of Jersey Sanitation Corporation's certification of completion of closure, the landfill was in compliance with all permit, regulatory and statutory requirements. Whatever Respondent's statement is supposed to mean or infer, the truth is that a certification of closure merely certifies exactly that which is stated on page 6 of Parties Exhibit 41, the landfill's Affidavit for Certification of Closure, dated June 7, 1999. The narrative included with the affidavit, starting on page 13 of the exhibit, indicates that although final cover work was completed, surveyed, tested and certified at the landfill in September of 1994, a delay was caused due to the issue of the final elevation and contours of the landfill. Respondent did not obtain siting approval for the overheight conditions at the landfill until March 8, 1999.
>
> As stated in the affidavit of certification of closure, the subject matter of the certification is the establishment of the dirt and vegetative final cover, in compliance with regulations, and confirmation of final contours.
>
> Respondent cites the case of *Bradd v. Illinois EPA*, PCB 90-173 (May 9, 1991), and 35 Ill. Adm. Code 807.508 in support of its statement on page 6 that in granting that [it is believed Respondent is referencing the fact the Illinois EPA acknowledged a closure date of September 30, 1994 for the subject landfill], of course, the IEPA acknowledged, both as a matter of fact and of law, that the landfill was in compliance with all such requirements as of that September 30, 1994.
>
> What the Illinois EPA actually did in the 1999 supplemental permit, which also acknowledged certification of closure, was approve the landfill's groundwater monitoring plan with conditions.
>
> In *Bradd,* Mr. Bradd's certification of closure was denied for five reasons, one of which was his failure to submit a permit application assessing the current groundwater conditions at his site and proposing an adequate groundwater monitoring program. *Bradd v. Illinois EPA*, PCB 90-173 (May 9, 1991), slip op at 3. The condition requiring that Mr. Bradd submit the assessment and program plan was special condition 15(b) of his permit. The Board held: "Section 40(a)(a) of the Act (Ill. Rev. Stat. 1989, ch 111 ½ par. 1040(a)(1)) provides, if the Agency refuses to grant or grants with conditions a permit under Section 39 of this Act, the applicant may, within 35 days, petition for a hearing before the Board to contest the decision of the Agency." (Emphasis added) (see also 35 Ill. Adm. Code 105.102(a)(2)). Because Mr. Bradd never appealed Special Condition 15(b) of Supplemental Permit No. 1988-248-SP or the Agency's April 6, 1989 denial of his proposed groundwater monitoring program within the above statutory time frame, he has waived any objection to the Agency's imposition of Special Condition

15(b) and its denial of his proposed groundwater monitoring program. . . . . the fact that Special Condition 15(b) of Supplemental Permit 1988-248-SP had not been satisfied was a sufficient basis for the Agency to deny Mr. Bradd's Affidavit for Certification of Closure and not issue a Certificate of Closure for the landfill. *Bradd,* slip op at 7-8.

The *Bradd* case does not stand for the proposition that issuance of Certification of Closure constitutes acknowledgment by the Illinois EPA that a landfill is in compliance with all permit, regulatory and statutory requirements. The case upheld the Illinois EPA's denial of a Certificate of Closure when a landfill failed to meet a special condition requiring submission of an assessment and acceptable groundwater monitoring plan. This does not preclude the Illinois EPA, in its discretion, from approving a groundwater monitoring plan with conditions rather than denying the plan altogether. In the case of Jersey Sanitation Corporation Landfill, the Illinois EPA approved the landfill's monitoring plan with conditions.

Contrary to the characterization made by Respondent on page 5 of its response brief, that the Illinois EPA's October 5, 1999 letter (which is actually the issuance of the 1999 supplemental permit) acknowledged compliance with all permit, regulatory and statutory requirements, nothing in the October 5, 1999 document indicated any such thing. The document is entered in the record as Parties Exhibit 42.

Any assertion made by the Board as to a date of closure or compliance, particularly every assertion supported by the record as to the actual level of compliance at the landfill on any given date, is a correct interpretation of provisions applicable to this site and regulatory measures taken, such as issuance of a permit. The Respondent is so non-specific in its reference to any of the Board's alleged assertions as to render paragraph 4(b) moot due to vagueness. The Respondent cites to page numbers, but nothing more specific. This is particularly true with the reference to page 7 of the order, it is completely unclear as to what on that page is relevant to Respondent's stated argument. What sentences, paragraphs, actual dates or actions, is the Respondent referring to in the assertions set forth in Paragraph 4(b) of its motion? Complainant objects to this paragraph, and the Board's giving it any credence, because it is too vague. Respondent has failed to identify the specific actions and/or dates of alleged activities, and thus has failed to provide sufficient specificity so as to provide notice of the actual nature of the assertion.

7. In response to Paragraph 4(c) of the Respondent's motion, Complainant again directs the Respondent's and Board's attention to the Complainant's original and reply post-

hearing briefs where this issue was addressed. In Paragraph 4(c), Respondent claims that the landscape waste at issue was not within the permitted boundary, and that Ms. Shourd's testimony to this effect was undisputed. Nothing could be further from the truth. As stated in the Complainant's original brief, on pages 93 through 95, upon receiving a letter with Ms. Shourd's contention that the landscape waste was not on the property, the Illinois EPA inspector assigned to the subject landfill double checked the permitted boundary and went back out to the site to compare the permitted boundary with the location of the landscape waste. Landscape waste at issue was within the permitted boundary. In Paragraph 4(c), Respondent goes on to state that the Board's ruling relied upon a ground never argued by Complainant. Respondent, however, does not state what "ground" it believes the Board to rely on that the Complainant never argued. From the Complainant's review of the briefs, all grounds relied upon by the Board in its order were raised in Complainant's briefs. The ground that both the landfill waste that existed on the property, and that which existed off the property constituted violations of the Act is raised in Complainant's original post-hearing brief on pages 94 and 95. In that Respondent has failed to specifically described the "ground" it believes not to have been raised by Complainant, Complainant objects to the assertion because Respondent has failed to state specifically the nature of the assertion and therefore Complainant does not have sufficient information to adequately respond.

8. In paragraph 4(d) of its motion, Respondent completely mischaracterizes the Complainant's allegations of violation concerning groundwater, and the Board's findings in its order. Again, as it has done time and time again, in objections, in argument at hearing, and in its brief, Respondent has attempted to deceptively define the groundwater issues in terms of permit requirements, and in particular permit requirements that were stricken by the Board.

The allegations contained in the second amended complaint, and the evidence presented at hearing and discussed in the Complainant's briefs, as well as the arguments

presented in Complainant's briefs, all speak for themselves. The allegations concern violation of groundwater standards at the site, and violation of Section 12(a) and 12(d) of the Act, 415 ILCS 5/12(a),(d). The exceedance of groundwater standards in sampling results for the site is undisputed. Complainant also presented evidence at hearing regarding the necessary remedy for each and every groundwater allegation, and said remedies were attested to by both the Complainant's experts and the Respondent's experts.

Contrary to Respondent's claims in Paragraph 4(d), as is apparent from the record in this matter, Respondent's expert did not testify that "there was no evidence of trends", in fact, their testimony supports quite the opposite proposition. Ken Liss testified that based on the sample results, a trend analysis was merited. Further, not one of Respondent's three experts testified that "no evidence existed to suggest the landfill was causing any exceedances", and not one of the Respondent's three experts testified that "the groundwater activities at the site were in full compliance with the permit". In fact, Mr. Liss testified that given all of the groundwater sampling data available at the Jersey Sanitation landfill site, and given that these results indicate exceedances of the groundwater standards, and given what the current permit requires, the current permit requires that a trend analysis be performed. Tr. for January 13, 2004 hearing at 40 and 41, Complainant's original post-hearing brief at pages 51 and 52. Respondent has failed to perform a trend analysis and failed to conduct a groundwater assessment for the site. Mr. Rathsack testified that, under the existing permit, if a trend was believed to be developing, a groundwater assessment was merited. TR at 398, and page 50 of Complainant's original post-hearing brief. In Paragraph 4(d), Respondent states that "this Board, however, changed the issue to one of violation of groundwater standards . . . " The second amended complaint clearly sets out allegations of groundwater standards. Undisputed sample results showing exceedances of groundwater standards exist in the record of this matter. The Board ruled upon exactly what it was asked to rule upon – allegations of the

exceedence of groundwater standards. Respondent goes on to make the absolutely absurd assertion that there was no support for a finding of violation of groundwater standards, and that the IEPA's own conclusion was that inadequate evidence existed of violation of groundwater standards. There is nothing in the record that would offer one scintilla of support for these statements. The only thing Complainant can think of is the argument addressed by the Complainant in its reply brief on page 12 and 13, and repeated here:

> Complainant has set forth, in great detail, the evidence presented in the record and at hearing that serves as the basis for its Section 12(a) and 12(d) allegations, and has argued these allegations in Sections B through H of its original brief. These arguments will not be repeated here. Complainant has met its burden. Respondent's case is completely void of any evidence that controverts Complainant's evidence. In its arguments, Respondent relies solely on the testimony of Complainant's witnesses that indicates that, due to the fact Respondent has completely abdicated its responsibility to address groundwater exceedences at the landfill, no work has been done to assess the exceedences. Thus, other sources have not been eliminated from the analysis. Respondent conveniently, in its argument, takes Complainant's witnesses' testimony out of context. Both citations to the transcript, that attributed to Ms. Nelson and the testimony attributed to Ms. Munie, are surrounded and qualified by the witnesses' testimony that pursuant to the regulations, particularly 35 Ill. Adm. Code 807.313 and 807.315, the landfill cannot cause or threaten water pollution. It is the responsibility of the landfill to conduct proper assessments to ascertain the source of contamination. Testimony of Joyce Munie, Tr. 40-47. Despite permit requirements applicable to Jersey Sanitation Landfill for years, including years prior to the recent permit appeal, requiring Jersey to perform an assessment and confirm the appropriateness of its monitoring plan, the landfill has failed to do so.
>
> The regulation found at 35 Ill. Adm. Code 807.315, a Part 807 provision, is particularly noteworthy at this juncture. It states, in pertinent part:
>
> > Protection of Waters of the State
> >
> > No person shall cause or allow the development or operation of a sanitary landfill unless the applicant proves to the satisfaction of the Agency that no damage or hazard will result to the waters of the State because of the development and operation of the sanitary landfill.
>
> Pursuant to this regulation, as well as Section 12(a) and 35 Ill. Adm. Code 807.313, Respondent must prove to the Illinois EPA that it is not existing as a hazard to waters of the State, which include groundwater, or is not otherwise contaminating waters of the State. Based on the evidence presented at hearing, groundwater sample results have indicated exceedences of the standard since 1991 at the landfill. The exceedences have increased in magnitude over the years. Respondent Jersey has failed to comply with all permit requirements designed to address the groundwater issues at the landfill. Respondent has not disputed, nor has it presented any evidence

to contradict Complainant's assertions, that Respondent has not performed a single assessment of the groundwater at the site. Complainant has presented evidence that the groundwater at the landfill is exceeding standards, the upgradient wells do not indicate exceedences and Respondent Jersey has completely failed to comply with 35 Ill. Adm. Code 807.315 and permit conditions requiring it to perform assessments consistent with the requirements of 35 Ill. Adm. Code 807.315. As a result, Jersey Sanitation is in violation of Section 12(a) and 12(d). Complainant has presented detailed evidence as to why this landfill does exist as a water pollution hazard upon the land – evidence that has been in the hands of Respondent since the day it purchased the landfill, if not before. The basic documentation was generated in 1973. Respondent itself submitted the documentation to the Illinois EPA.

9. In Paragraph 4(e), Respondent again argues a position that it has argued throughout the proceeding and that is that it did not realize economic benefit due to its non-compliance. The Board, in its finding on page 37 of its order indicates, "the $34,433 the People request as representative of the ***costs avoided*** and the value the People assigned to the duration and gravity of the violations, $30,567, are appropriate." (Emphasis added.) Respondent's argument has no merit, since by failing to comply, Respondent did avoid the costs of compliance.

Further, Respondent's argument that it had insufficient resources to properly run the landfill and meet the costs of doing business is not a particularly strong one. The Respondent had a choice as to purchase or not to purchase the landfill. Respondent was aware of the challenges of this landfill, and was aware of the regulatory climate. The vast majority of the penalty assigned to cost avoidance was due to the Respondent's failure to adequately provide financial assurance. As the Board stated in its order, on page 36, "the funding of the financial assurance is an obligation every owner of a landfill in Illinois owes the taxpayers of this State and is part and parcel of the cost of doing business here," citing *People v. ESG Watts, Inc.*, PCB 96-107 (Feb. 5, 1998). The argument that Respondent used every dollar of revenue generated by the landfill for compliance is disputed in the record. It is obvious from the record in this matter that the Respondent had a number of businesses associated with the 200 acre

property. It is also obvious from the record that there was minimal compliance activity at the subject landfill from 1989 through 1995. It was not until 1995, when RCS, Inc. took over management of the site, that compliance noticeably improved.

10. In Paragraph 4(f), Respondent claims that there is no evidence to support the Board's conclusion that a $65,000 penalty is necessary to deter the Respondent. Respondent goes on to make the absolutely absurd inference that there is no behavior exhibited in or associated with this matter that should be deterred, either in regard to the Respondent itself or others similarly subject to the Act. The landfill is currently out of compliance and has been for 15 years. Respondent, currently, is once again out of compliance with financial assurance requirements. Respondent, for 13 years, has done absolutely nothing to address exceedences of groundwater standards at the site. This is not behavior to be encouraged, by this Respondent or any other person similarly subject to the Act. In fact, the Respondent is a poster child for deterrence. It has arrogantly and very stubbornly refused to ever address the groundwater issues at this site. The Respondent allowed the landfill to exist in a serious state of noncompliance for five years. Four times the Illinois EPA inspector observed leachate from the landfill entering the nearby creek. The groundwater issues that have existed at the site since the very early 1990s were predicted in a 1973 document, that was included with the Respondent's submittal to the Illinois EPA in 1989, as ramifications of the Respondent's failure to install environmental protection measures at the site, such an leachate collection, surface drainage structures and to ensure adequate cover – all of which were required by permit.

11. Complainant's response to Paragraph 5 of Respondent's motion is stated in paragraph 2(D) above and will not be repeated here. Complainant has just a few words to add at this point. An individual, such as Ms. Shourd, who was the only shareholder to testify, who feels entitled to something because of some alleged wrong that was done to her, has a natural knee jerk reaction to become arrogant and insensitive to the reality occurring around her.

When a person becomes embittered on the job, due to some belief that he or she has been wronged, one reaction is to become arrogant and insensitive to the reality around him or her, and to so strongly believe something is owed him or her as to begin to justify his or her behavior in taking time or money, or whatever. In this case, Ms. Shourd's belief system is so strong that she was wronged, she now seems to believe, if her arguments are to be taken seriously, that the state owes her the ability to leave this landfill in a serious state of non-compliance for long periods of time, and completely ignore groundwater issues despite rising levels of arsenic.

Ms. Shourd has not been wronged by the State. She has been wronged by her own actions and judgment. She was wronged by her own arrogance, that is, by her beliefs that she should be able to take on this landfill and the 200 acres it sits on, pursue the landfill business on this property, and yet be justified in failing to adhere to environmental regulations applicable to the old, existing landfill that is the subject of this action. Ms. Shourd's entitlement mindset is an affront to the public's interest in environmental protection. She has been justifying her actions in purchasing this landfill for 15 years, by ignoring the very serious compliance issues that exist at the subject landfill. To this day, Respondent Jersey Sanitation feels entitled to ignore environmental regulations because it has allowed itself to be consumed by its own poor judgment and arrogance.

12. Respondent has offered no new evidence, or change in the law, or any law for that matter, that would suggest any error in the Board's order of February 3, 2005, or that would merit any change in the Board's decision.

WHEREFORE, on the foregoing grounds and for the foregoing reasons, Complainant respectfully requests that the Board deny Respondent's motion for reconsideration.

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

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