

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

VERNON and ELAINE ZOHFELD,)	
)	
Complainants,)	
)	
vs.)	PCB No. 05-193
)	(Citizen's Enforcement, Air)
BOB DRAKE, WABASH VALLEY)	
SERVICE COMPANY, MICHAEL J.)	
PFISTER, NOAH D. HORTON, and)	
STEVE KINDER,)	
)	
Respondents.)	

NOTICE OF FILING

TO: Ms. Dorothy M. Gunn	Carol Webb, Esq.
Clerk of the Board	Hearing Officer
Illinois Pollution Control Board	Illinois Pollution Control Board
100 West Randolph Street	1021 North Grand Avenue East
Suite 11-500	Post Office Box 19274
Chicago, Illinois 60601	Springfield, Illinois 62794-9274
(VIA ELECTRONIC MAIL)	(VIA ELECTRONIC MAIL)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board a **MOTION FOR LEAVE TO FILE A REPLY TO COMPLAINANTS' RESPONSE TO MOTION TO STAY PROCEEDINGS** on behalf of Respondents, Wabash Valley Service Company, Michael J. Pfister, Noah D. Horton and Steve Kinder, a copy of which is herewith served upon you.

Respectfully submitted,

WABASH VALLEY SERVICE COMPANY,
MICHAEL J. PFISTER, NOAH D. HORTON,
and STEVE KINDER,
Respondents,

Dated: August 15, 2005

By: s/ Thomas G. Safley
One of Their Attorneys

Thomas G. Safley
Gale W. Newton
HODGE DWYER ZEMAN
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900

CERTIFICATE OF SERVICE

I, Thomas G. Safley, the undersigned, certify that I have served the attached
MOTION FOR LEAVE TO FILE A REPLY TO COMPLAINANTS' RESPONSE TO
MOTION TO STAY PROCEEDINGS upon:

Ms. Dorothy M. Gunn
Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

Carol Webb, Esq.
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Post Office Box 19274
Springfield, Illinois 62794-9274

via electronic mail on August 15, 2005; and upon:

Stephen F. Hedinger, Esq.
Hedinger Law Office
2601 South Fifth Street
Springfield, Illinois 62703

Thomas H. Bryan, Esq.
Fine & Hatfield, P.C.
520 N.W. Second Street
Post Office Box 779
Evansville, Indiana 47705-0779

by depositing said documents in the United States Mail in Springfield, Illinois, postage
prepaid, on August 15, 2005.

/s/ Thomas G. Safley
Thomas G. Safley

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STEVE KINDER,)	
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Respondents.)	

**MOTION FOR LEAVE TO FILE A REPLY
TO COMPLAINANTS' RESPONSE TO MOTION TO STAY PROCEEDINGS**

NOW COME Respondents, WABASH VALLEY SERVICE COMPANY, MICHAEL J. PFISTER, NOAH D. HORTON, and STEVE KINDER (hereinafter "Respondents"), by and through their attorneys, HODGE DWYER ZEMAN, and pursuant to Section 101.500(e) of the Illinois Pollution Control Board's ("Board") procedural rules, 35 Ill. Admin. Code §101.500(e), move Carol Webb, Hearing Officer in this matter, for leave to file their Reply to Complainants' Response to Motion to Stay Proceedings ("Response").

1. On May 9, 2005, Complainants filed their Complaint with the Board in this matter.
2. On April 26, 2005, a criminal Information (the "Information") was filed with the United States District Court for the Southern District of Illinois relating to this same "incident." See United States of America v. Wabash Valley Service Co., Glen S. Kinder, and Noah David Horton, Criminal No. 05-40029-JPG, a copy of which

Information is attached as an exhibit to the Verified Motion to Stay Proceedings filed by Respondents.

3. On July 8, 2005, Respondents filed a Verified Motion to Stay Proceedings.

4. On August 3, 2005, Complainants filed a Response to Motion to Stay Proceedings.

5. Under the Board's procedural rules, a moving party is not entitled to file a reply, except as permitted by the Board or the Hearing Officer to prevent material prejudice. 35 Ill. Admin. Code § 101.500(e).

6. Respondents believe that Complainants' Response does not completely or accurately represent the state of the case law regarding simultaneous criminal and civil proceedings involving the same subject matter.

7. Respondents believe that due to the above-mentioned incomplete or inaccurate characterization of the case law, Complainants have also incorrectly applied the case law to the circumstances here.

8. Furthermore, in their Response, Complainants have asserted new facts that are not of record in this proceeding, and which, therefore, Wabash Valley did not address, and could not have addressed, in its Motion to Stay.

9. Complainants have also grossly mischaracterized statements made in the Verified Motion to Stay Proceedings.

10. Allowing the Respondents to file the Reply would avoid material prejudice that would result if Complainants' Response was allowed to stand containing inaccuracies in its characterization of the case law and the application of law to the circumstances here;

new assertions of fact which Wabash Valley has not had a chance to address; and, gross mischaracterizations of statements made in the Verified Motion to Stay Proceedings.

WHEREFORE, for the above and foregoing reasons, Respondents WABASH VALLEY SERVICE COMPANY, MICHAEL J. PFISTER, NOAH D. HORTON, and STEVE KINDER, respectfully request that the Hearing Officer grant them leave to file their Reply to Complainants' Response to Motions to Stay Proceedings.

Respectfully submitted,

WABASH VALLEY SERVICE
COMPANY, MICHAEL J. PFISTER,
NOAH D. HORTON, and STEVE KINDER
Respondents,

By: /s/ Thomas G. Safley
One of Their Attorneys

Dated: August 15, 2005

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