

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
by LISA MADIGAN, Attorney)	
General of the State of Illinois,)	
)	
Complainant,)	
)	
v.)	PCB No. 06-27
)	
JOEL HILLMAN, individually,)	(Enforcement - Air)
)	
Respondent.)	

NOTICE OF FILING

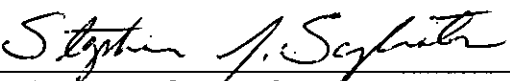
TO: See Attached Service List
(VIA ELECTRONIC FILING)

PLEASE TAKE NOTICE that I have filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing Complainant's Response to Respondent's Letter Construed as Motion for Extension of Time, a copy of which is attached herewith and served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
Attorney General of the State of Illinois

BY:


STEPHEN J. SYLVESTER
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601
312-814-2087

DATE: December 15, 2005

THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

Mr. Joel Hillman
3000 Island Blvd Apt 2003
Aventura, Florida 33160

AND

15 Franklin Avenue
Quogue, NY 11978

Mr. Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
100 W. Randolph, Room 11-500
Chicago, Illinois 60601

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
by LISA MADIGAN, Attorney)	
General of the State of Illinois,)	
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Complainant,)	
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v.)	PCB No. 06-27
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JOEL HILLMAN, individually,)	(Enforcement - Air)
)	
Respondent.)	

RESPONSE TO RESPONDENT'S LETTER CONSTRUED AS
MOTION FOR EXTENSION OF TIME

Complainant, PEOPLE OF THE STATE OF ILLINOIS ("People") hereby submits its Response to what has been deemed as Respondent, Joel Hillman's, Motion for Extension of Time to Answer the Complaint, and without waiving the People's objection that this matter is not properly before the Board, since Respondent has not been served as directed by the Hearing Officer's in his December 1, 2005 Order in accordance with Section 101.304 of the Board's Procedural Rules, states as follows:

BACKGROUND

1. On August 24, 2005, the People filed its four count complaint against Respondent, JOEL HILLMAN ("Hillman"), alleging violations of Sections 9(a) and 9.1(d) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/9(a) and 9.1(d) (2004), Section 201.141 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.141, and Sections 61.145(b), (c)(1), and (c)(6), and 61.150(b) of the U.S. EPA's NESHAPs, 40 C.F.R. 61.145(b), (c)(1), and (c)(6), and 61.150(b).

2. Also on August 24, 2005, the People made service upon Respondent's attorney, William J. Anaya ("Anaya"), who had agreed to accept service on behalf of his client, Hillman.¹

3. On September 12, 2005, Anaya informed counsel for the People that at Hillman's direction, Anaya was no longer representing Hillman. **See exhibit A.**

4. On September 15, 2005, the People served its complaint on Hillman.

5. On September 22, 2005, the parties participated in a telephonic status conference with the hearing officer, and agreed that Hillman's answer would be due to be filed on or before November 15, 2005.

6. On November 23, 2005, the People filed its Motion to Deem Facts Admitted and for Summary Judgment.

7. On November 30, 2005, Hillman faxed a letter to the hearing officer regarding an extension of time to answer the complaint and respond to the People's Motion to Deem Facts Admitted and for Summary Judgment.

8. On December 1, 2005, a Hearing Officer Order was issued construing Hillman's letter as a Motion for Extension of Time to Answer the People's Complaint and directing Hillman to serve the People in accordance with Section 101.304 of the Board's procedural rules.

ARGUMENT

Section 101.522 of the Board's Procedural Rules, 35 Ill. Adm. Code 101.522, entitled "Motions for Extension of Time," provides as follows:

The Board or hearing officer, for good cause shown on a motion after notice to the opposite party, may extend the time for filing any document or doing any act which is required by these rules to be done within a limited period, either before or after the expiration of time.

¹ During the pendency of this litigation, Hillman has resided at 3 different locations

I. Respondent failed to Comply with Both the December 1, 2005 Hearing Officer Order and Section 101.522 of the Board's Procedural Rules

The December 1, 2005 Hearing Officer Order in this matter stated, in pertinent part, as follows:

On November 30, 2005, the respondent filed with the Board a letter that has been construed as a motion for extension of time to file his answer to the complaint. It appears from the face of the letter that the complainant was not served.

The respondent is directed to serve the complainant in accordance with Section 101.304 of the Board's procedural rules. . . .

Section 101.304 of the Board's Procedural Rules, 35 Ill. Adm. Code 101.304, provides, in pertinent part, as follows:

- b) Duty to Serve. Parties in Board adjudicatory proceedings are responsible for service of all documents they file with the Clerk's Office. Proof of service of initial filings must be filed with the Board upon completion of service.
- * * * *
- d) Affidavit or Certificate of Service. A proceeding is subject to dismissal, and parties are subject to sanctions in accordance with Section 101.800 of this Part, if service is not timely made. Proof of proper service is the responsibility of the party filing and serving the document. An affidavit of service or certificate of service must accompany all filings of all parties. A sample form of the affidavit of service and certificate of service is available at the Board's Offices (the locations of the Board's Offices are listed at 2 Ill. Adm. Code 2175.115) and may be obtained electronically at the Board's Web site.

As of the date of filing this Response, the People have not been served a copy of Hillman's Motion for Extension of Time in "accordance with Section 101.304 of the Board's procedural rules," as directed by the Hearing Officer.² Therefore, Hillman's Motion for Extension of Time is not properly before the Board and should not be considered, or in the alternative, his Motion for Extension of Time should be denied.

² The People did receive an unsigned copy of the letter via email from Respondent, Hillman, on November 30, 2005. Since the People are aware of Hillman's Motion and to avoid any further delay in the resolution of this case, and without waiving its objections to Hillman's failure to comply with the December 1, 2005 Hearing Officer Order, the People have submitted this Response.

II. Hillman has not Demonstrated Good Cause Why He Should Be Granted an Extension of Time to Answer the People's Complaint

The complaint in this matter was filed and served upon Hillman's former attorney, Anaya, who had agreed to accept service on behalf of Hillman on August 24, 2005. By letter dated September 12, 2005, Anaya informed counsel for the People that at Hillman's direction, Anaya was no longer representing Hillman. **See exhibit A.** Subsequently, during the September 22, 2005 telephonic status conference with the Hearing Officer, it was agreed that the time for Hillman to answer the complaint would be extended to November 15, 2005, which equaled an additional 21 days.

On November 15, 2005, 81 days after the People filed its complaint in this matter and served it upon Hillman's attorney, the People had not been served with Hillman's Answer to the People's Complaint, as required by the September 22, 2005 Hearing Officer Order, nor had Hillman filed a motion staying the 60-day period in which to file an answer pursuant to Section 103.204(d) and (e) of the Board's Procedural Rules, 35 Ill. Adm. Code 103. 204(d) and (e). Additionally, Hillman made no attempt to contact counsel for the People nor the Hearing Officer to explain his inability to comply with the September 22, 2005 Hearing Officer Order.

As a result of Hillman's failure to answer the People's complaint, on November 23, 2005, the People filed its Motion to Deem Facts Admitted and for Summary Judgment. On November 29, 2005, subsequent to Hillman's receipt of the People's Motion to Deem Facts Admitted and for Summary Judgment and two weeks after the date his answer was due, Hillman sent an email to counsel for Respondent wherein he stated as follows:

Apparently, I screwed up in not responding...Pleading ignorance...is there a way for me to request a very short extension so that I may answer the allegations, and set aside the Motion for Summary Judgment? (emphasis added)

See exhibit B. Additionally, in a telephone conversation between Hillman and counsel for the People, subsequent to the People's filing of the Motion to Deem Facts Admitted and for Summary Judgment on November 30, 2005, Hillman stated that he had missed the November 15, 2005 date for filing his answer and indicated that the reason for this was his belief that discovery had to be undertaken prior to filing an answer.

On November 30, 2005, 96 days after the People filed its complaint in this matter and served it upon Hillman's attorney, and 15 days after the November 15, 2005 deadline, Hillman filed what has been construed as a motion for an extension of time to answer the People's complaint. In His Motion for Extension of Time, Hillman stated in pertinent part, as follows:

Unfortunately, our community here in Florida was severely damaged by Hurricane Wilma, which occurred in the last days of October. I am very much involved in the Community, and the time and effort that was required completely diverted my attention from this most important matter. . . . Motion at 1.

While it is true that Hurricane Wilma made landfall and impacted Southern Florida on October 24 and 25, 2005, that was 21 days, or a full 3 weeks, prior to the November 15, 2005 date with which Hillman had been ordered to file his answer by the Hearing Officer. Further, Hillman failed to request an extension of time to answer the complaint until November 30, 2005, 37 days or more than 5 weeks after Hurricane Wilma made landfall and impacted Southern Florida. Further, Hillman's statement that "I am very much involved in the Community, and the time and effort that was required completely diverted my attention," may be true, but it is certainly lacking in detail and utterly unsupported. It is difficult to believe that it took Hillman 5 weeks to make the minimal effort required to inquire about an extension of time to answer the People's complaint and to file such a motion.

Additionally, his rationale for failing to comply with the Hearing Officer Order of September 22, 2005, requiring him to answer the People's complaint by November 15, 2005 is

rife with inconsistency. Based on Hillman's communications it is impossible to determine if his failure to comply with the Hearing Officer Order of September 22, 2005 occurred because he was involved in "the community" in the aftermath of Hurricane Wilma to the exclusion of all else, because Hillman "screwed up," because he thought discovery had to be completed prior to his answer, or most likely because in the People's Motion to Deem Facts Admitted and for Summary Judgment, the People were seeking the statutory maximum penalty of \$8,280,000.00.³ Hillman certainly had the opportunity of answering the People's complaint within days of the Hearing Officer Order of September 22, 2005, he could have requested an extension of time prior to the November 15, 2005 deadline, if he considered this an important matter, but he did not.

To date in this case, Hillman has been a source of delay and obfuscation. Hillman chose to terminate his legal counsel after the complaint in this matter had been filed and willingly chose to litigate this matter on his own behalf. Further, Hillman has access to the Board's Procedural Rules, has participated in all telephonic status conferences and has been properly served with all of the Board's and/or Hearing Officer Orders in this matter, as well as all of the People's filings with the Board. Since Hillman has not demonstrated good cause why he should be granted an extension of time to answer the People's complaint, Hillman's Motion for Extension of Time to Answer the People's Complaint should be denied.

³ See exhibit C. November 29, 2005 email sent from Hillman to counsel for the People, sent 20 minutes after Hillman's initial email, see exhibit B

CONCLUSION

For the foregoing reasons, Complainant, PEOPLE OF THE STATE OF ILLINOIS, requests that Respondent, JOEL HILLMAN'S, Motion for Extension of Time to Answer the People's Complaint should be denied.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
Attorney General of the State of Illinois

BY:



STEPHEN J. SYLVESTER
Assistant Attorney General
Environmental Bureau North
188 West Randolph St., 20th Floor
Chicago, Illinois 60601
312-814-2087

LAW OFFICES
ARNSTEIN & LEHR LLP

120 SOUTH RIVERSIDE PLAZA · SUITE 1200

CHICAGO, ILLINOIS 60606-3910

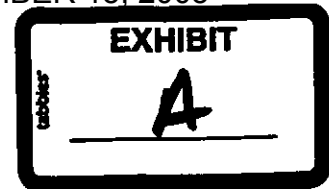
(312) 876-7100

FAX (312) 876-0288

www.arnstein.com

FOUNDED 1893

William J. Anaya
(312) 876-7109
wjanaya@arnstein.com
Direct Facsimile: (312) 876-7309
Licensed in Illinois and Indiana



WEST PALM BEACH, FLORIDA

HOFFMAN ESTATES, ILLINOIS

MILWAUKEE, WISCONSIN

MEMBER OF INTERNATIONAL
LAWYERS NETWORK

September 12, 2005

Office of the Attorney General
State of Illinois
188 West Randolph
Chicago, Illinois 60601

Attention: Mr. Stephen Sylvester

Re: *People v. Hillman*
Cause Number: PCB-2006-027 (Air Enforcement)
Our File No.: 17346-0004

Dear Mr. Sylvester:

As we discussed on the telephone today, at Mr. Joel Hillman's direction, we no longer represent Mr. Hillman in the above-referenced matter. Accordingly, we are not authorized to accept service of process in his behalf. We have no additional information.

Very truly yours,

ARNSTEIN & LEHR LLP

A handwritten signature in black ink, appearing to read "William J. Anaya".
William J. Anaya

WJA:dp
Enclosure
cc: Mr. Joel Hillman
Mr. J. William Braithwaite
1004123v1

RECEIVED
SEP 14 2005
**ATTORNEY GENERAL
ENVIRONMENTAL BUREAU**



Sylvester, Stephen

From: Joelhillman@aol.com
Sent: Tuesday, November 29, 2005 10:01 AM
To: Sylvester, Stephen
Subject: Re: People v. Joel Hillman PCB 06-27

In a message dated 11/28/2005 2:26:10 PM Eastern Standard Time, ssylvester@atg.state.il.us writes:

Steve:

Apparently, I screwed up in not responding...Pleading ignorance...Is there a way for me to request a very short extension so that I may answer the allegations, and set aside the Motion for Summary Judgement?

JRHillman

Joel,

On Wednesday, November 23, 2005, the State filed its Motion to Deem Facts Admitted and for Summary Judgment, and I mailed copies to your Aventura, FL and Quiogue, NY addresses. It is now available for viewing on the Illinois Pollution Control Board's Website:
<http://www.ipcb.state.il.us/documents/dsweb/Get/Document-49966/>

Regarding your earlier email, I do not have a list of witnesses at this time. Also, I am unsure of which lab results you are referring to, please let me know specifically which results you are referring to (i.e. the results obtained by the Illinois EPA or results obtained by your asbestos contractors)?

Thank you,

Stephen J. Sylvester

Assistant Attorney General

Illinois Attorney General's Office

Environmental Bureau North

188 W. Randolph Street, 20th Fl.

Chicago, IL 60601

Phone: (312) 814-2087

12/14/2005

Fax: (312) 814-2347

ssylvester@atg.state.il.us

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12/14/2005



Sylvester, Stephen

From: Joelhillman@aol.com
Sent: Tuesday, November 29, 2005 10:20 AM
To: Sylvester, Stephen
Subject: My question,

is there an administrative procedure which allows me to appeal for a short extended time to respond. In light of the enormous sum claimed, and due to mitigating circumstances, I would like to have this opportunity.

Please advise.

JRHillman

12/15/2005

CERTIFICATE OF SERVICE

I, STEPHEN J. SYLVESTER, an Assistant Attorney General in this case, do certify that I caused to be served this 15th day of December, 2005, the foregoing Response to Respondent's Letter Construed As Motion for Extension of Time and Notice of Filing upon the persons listed on said Notice by depositing same in an envelope, by first class postage prepaid, with the United States Postal Service at 100 West Randolph Street, Chicago, Illinois, at or before the hour of 5:00 p.m.


STEPHEN J. SYLVESTER