

ILLINOIS POLLUTION CONTROL BOARD

June 15, 2006

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 06-33
)	(Enforcement - Land)
J&S COMPANIES, INC., a Missouri)	
corporation, and FIRST CHOICE)	
CONSTRUCTION, INC., an Illinois)	
corporation,)	
)	
Respondents.)	

DISSENTING OPINION (by T.E. Johnson):

I respectfully dissent with the majority opinion. Specifically, I disagree with the majority's finding that First Choice admitted the facts contained in the complaint. I understand that pursuant to Section 103.204(d) of the Board's regulations, not filing an answer or a motion challenging the complaint within 60 days of receiving the complaint results in an admission of the allegations in the complaint. First Choice did not comply with Section 103.204(d). Nevertheless, this issue is simply not before us at this time.

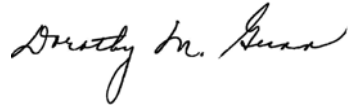
The only pleading currently before the Board regarding First Choice is the People's request to admit facts - a request to which First Choice timely and properly responded. While I agree that First Choice's failure to comply with Section 103.204(d) may ultimately result in the admission of the allegations contained in the complaint, I think the Board is better served in addressing this failure based on an actual motion by the People - either a motion to deem facts admitted or a motion for summary judgment would be fitting. The majority's *sua sponte* decision to find that First Choice admitted the allegations in the complaint is neither necessary nor appropriate at this time.

For the above stated reasons, I respectfully dissent.



Thomas E. Johnson
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the above dissenting opinion was submitted on July 6, 2006.

A handwritten signature in cursive script, reading "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board