



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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CLERK'S OFFICE

DEC 22 2008

STATE OF ILLINOIS
Pollution Control Board

Lisa Madigan
ATTORNEY GENERAL

December 17, 2008

John T. Therriault, Assistant Clerk
Assistant Clerk of the Board
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, Illinois 60601

Re: ***City of Quincy v. IEPA***
PCB No. 08-86

Dear Clerk:

Enclosed for filing please find the original and one copy of a Notice of Filing, Respondent's Motion for Leave to File Instant and Respondent's Response to Motion for Summary Judgment in regard to the above-captioned matter. Please file the originals and return file-stamped copies to me in the enclosed envelope.

Thank you for your cooperation and consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "Thomas Davis", is written over a horizontal line.

Thomas Davis, Bureau Chief
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

TD/pjk
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

DEC 22 2008

STATE OF ILLINOIS
Pollution Control Board

CITY OF QUINCY,
an Illinois municipal corporation,

Petitioner,

v.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

PCB No. 08-86
(NPDES Permit Appeal)

NOTICE OF FILING

To: Fred C. Prillaman
Mohan, Allewelt, Prillaman & Adami
One North Old State Capital Plaza, Ste. 325
Springfield, IL 62701

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, Respondent's Motion for Leave to File Instantly and Respondent's Response to Motion for Summary Judgment, 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: _____
THOMAS DAVIS, Bureau Chief
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: December 17, 2008

CERTIFICATE OF SERVICE

I hereby certify that I did on December 17, 2008, 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, RESPONDENT'S MOTION FOR LEAVE TO FILE INSTANTER and RESPONSE TO MOTION FOR SUMMARY JUDGMENT

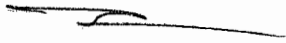
To: Fred C. Prillaman
Mohan, Alewelt, Prillaman & Adami
First of America Center
1 North Old State Capitol Plaza, Ste. 325
Springfield, IL 62701-1323

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
James R. Thompson 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:

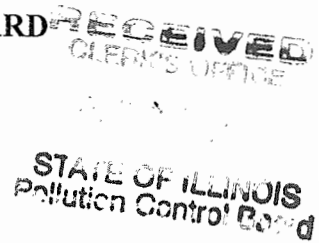
Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Springfield, IL 62794



THOMAS DAVIS, Bureau Chief
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD



CITY OF QUINCY,
an Illinois municipal corporation,

Petitioner,

v.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

PCB No. 08-86
(NPDES Permit Appeal)

RESPONDENT'S MOTION FOR LEAVE TO FILE INSTANTER

Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, by its attorney.
LISA MADIGAN, Attorney General of the State of Illinois, hereby moves for leave to file
instante a Response to the Motion for Summary Judgment by the City of Quincy, and states as
follows:

1. By agreement of the parties, the Hearing Officer issued an order on December 1,
2008, directing the Respondent to file its response to the City's Motion for Summary Judgment
by December 15, 2008.
2. Due to the press of other business, the undersigned counsel for the Respondent did
not obtain the necessary affidavit to accompany the responsive pleadings until December 17,
2008.
3. The above-referenced order also directed the Petitioner to file any reply by
December 29, 2008.
4. The Respondent respectfully requests leave to file the attached Response *instante*
and suggests that the Petitioner be granted additional time to file any reply.

WHEREFORE, the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, requests

leave to file *instanter* the Response to the Motion for Summary Judgment.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,
ex rel. LISA MADIGAN,
Attorney General
of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: 

THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

Attorney Reg. No. 3124200
500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: 12/17/08

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

CITY OF QUINCY,
an Illinois municipal corporation,

Petitioner,

v.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

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PCB No. 08-86
(NPDES Permit Appeal)

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STATE OF ILLINOIS
Pollution Control Board

RESPONSE TO MOTION FOR SUMMARY JUDGMENT

Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, by its attorney.

LISA MADIGAN, Attorney General of the State of Illinois, hereby responds and objects to the Motion for Summary Judgment by the City of Quincy, and states as follows:

1. Summary judgment is only appropriate when the pleadings, depositions, admissions on file, and affidavits disclose that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 483 (1998). In ruling on a motion for summary judgment, the Board “must consider the pleadings, depositions, and affidavits strictly against the movant and in favor of the opposing party.” *Id.* Summary judgment “is a drastic means of disposing of litigation,” and therefore it should be granted only when the movant’s right to the relief “is clear and free from doubt.” *Id.*, citing *Purtill v. Hess*, 111 Ill. 2d 299, 240 (1986). When ruling on motion for summary judgment, it is not the Board's function to resolve disputed factual question, but to determine whether one exists.

2. A genuine issue of material fact exists not only when facts are in dispute, but also where reasonable persons could draw different inferences from undisputed facts. See, e.g.,

Larsen v. *Viv Tanney Int'l*, 130 Ill. App. 3d 574 (5th Dist. 1984); *In re Estate of Ciesiolkiewicz*, 243 Ill. App. 3d 506 (1st Dist. 1993). Moreover, the different inferences drawn from the facts may depend upon the interests of the parties.

3. The Illinois EPA had a meeting with the City and its consultants on July 12, 2007, at their request, to discuss the terms and conditions of the draft NPDES permit and the issues relating to combined sewer overflows (CSOs) and sensitive areas.

4. The City's Motion for Summary Judgment alleges: "During the [July 12, 2007] meeting, it was agreed that none of the City of Quincy's CSOs discharged to sensitive areas. . . ." (Motion, page 8). The letter dated August 8, 2007, from the City of Quincy, which was addressed to Richard Pinneo of the Illinois EPA, stated in pertinent part: "The consensus of meeting attendees was that none of the combined sewer overflows (CSOs) impacted receiving waters in Quincy's system were identified as sensitive areas." (IEPA Exhibit 22; Record, page 268). Neither factual statement is accurate. In the attached affidavit of Ralph Hahn, he states with direct and personal knowledge that the Illinois EPA did not agree at the meeting with the City and its consultants on July 12, 2007, that none of the City of Quincy's CSOs discharged to sensitive areas.

5. The NPDES permit issued to the City of Quincy represents the best professional judgment of the Illinois EPA regarding the application of federal policy and State regulations. The Motion for Summary Judgment is premised upon the allegation that the Illinois EPA had agreed, prior to the issuance of the NPDES permit, that none of the City of Quincy's CSOs discharged to sensitive areas. No affidavit supports this factual allegation by the City. The Illinois EPA's counter-affidavit specifically denies this allegation. Therefore, there exists a genuine issue of material fact precluding the Board from granting judgment on the pleadings.

WHEREFORE, the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, requests
that the Motion for Summary Judgment be DENIED.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,
ex rel. LISA MADIGAN,
Attorney General
of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: _____

THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

Attorney Reg. No. 3124200
500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: 12/17/08

page 268-69), and the Motion for Summary Judgment in this matter.

4. The City's Motion for Summary Judgment alleges: "During the [July 12, 2007] meeting, it was agreed that none of the City of Quincy's CSOs discharged to sensitive areas. . . ." (Motion, page 8). The letter dated August 8, 2007, from the City of Quincy, stated in pertinent part: "The consensus of meeting attendees was that none of the combined sewer overflows (CSOs) impacted receiving waters in Quincy's system were identified as sensitive areas." (IEPA Exhibit 22; Record, page 268). Neither factual statement is accurate. I state with direct and personal knowledge that I did not agree at the meeting with the City and its consultants on July 12, 2007, that none of the City of Quincy's CSOs discharged to sensitive areas.

5. The NPDES permit issued to the City of Quincy represents the best professional judgment of the Illinois Environmental Protection Agency regarding the application of federal policy and State regulations.

Dated: 12/16/08

Ralph Hahn

RALPH HAHN