



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

CITY OF JOLIET,	)	
	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB No. 09-25
	)	(Permit Appeal-Water)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY	)	
	)	
Respondent.	)	

**RESPONDENT ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S  
RESPONSE TO PETITIONER'S MOTION TO STRIKE**

NOW COMES Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, by and through its Attorney and pursuant to Section 101.500(d) of the Illinois Pollution Control Board Procedural Regulations, 35.Ill. Adm. Code 101.500(d), for its response to Petitioner's, CITY OF JOLIET, Motion to Strike Certain Statements in Respondent's Reply Brief, states as follows:

**Introduction**

On January 13, 2009, a hearing was held on Petitioner's appeal of a denial of permit modification application by the Illinois EPA because Petitioner did not show that its activities would not result in a violation of the Illinois Environmental Protection Act, (the "Act"). 415 ILCS 5/1 *et seq.* After the Hearing and in consultation with the parties a post hearing briefing schedule was agreed to. This included simultaneously filed opening briefs and simultaneous replies. Petitioner, after agreeing to the briefing schedule has now decided to waive the Board's decision deadline and has filed the instant motion as a thinly veiled attempt to get in the last word. It is obvious Petitioner has realized that it has failed in meeting its burden and again is raising issues which are tangential to the true scope of this appeal. Respondent respectfully requests that the Board deny this Motion

without considering it. However, if the Board decides to consider Petitioner's Motion to Strike Certain Statements from Respondent's Reply Brief, Respondent would argue as follows:

**Argument**

**1. Building Codes**

The language Petitioner seeks to strike is as follows:

Additionally, Petitioner never shows where the removed topsoil will end up. The soils could be consolidated thus increasing the concentrations to even greater levels.

The foregoing language is meant to stress the fact that Petitioner misses the point and burden of a permit appeal. The lengthy discussion of building codes, compliance with such codes and whether Joliet requires the removal of topsoil from residential building sites is not before the Board. If there is a red herring in this argument it is raised by Joliet in that compliance with building codes can somehow reduce exposures to radium. That is not the issue before the Board. What is before the Board is Joliet's request to increase the concentration of radium it is spreading around the community. Illinois EPA rightly denied this request. This language should not be stricken.

**2. Application of the MOA**

Petitioner seeks to have this entire section stricken. Petitioner is incorrect when it argues Respondent does not cite to facts in the record to support its assertions in this section. Petitioner was intimately involved in the rulemaking cited to by Respondent. See Generally the docket for R04-21. Clearly, Petitioner knew it had to deal with the radium in its water and if removed in its sludge. The burden is on the Petitioner to show that when it removes radium from its citizens drinking water that it can be adequately managed in a safe and responsible way. Petitioner failed in this burden. The Illinois EPA gave a well reasoned basis and argument for why the limitation was imposed for the first time in 2006.

**3. IEMA Determination**

The statement Petitioner seeks to have stricken is as follows:

IEMA's department of nuclear safety has made determinations on the health effects and bioaccumulative properties of radium.

Contrary to this argument IEMA has weighed in on Joliet's proposed permit modification and the record is quite clear on this point. See R. 33-34 and 328-335. This statement should remain.

**Conclusion**

As set out at the beginning of this reply, Petitioner sought to modify a permit to allow it to increase the radium concentration in its waste water treatment sludge which it would then land apply in the community. This permit was denied and that denial letter framed the issues on appeal and placed the burden during the appeal on the permit applicant. Petitioner's motion is just a third attempt to convince the Board it has met that burden. Respondent respectfully requests that the Board deny Petitioner's motion in its entirety.

WHEREFORE, Respondent, Illinois Environmental Protection Agency, respectfully request the Illinois Pollution Control Board enter an order denying Petitioner's Motion to Strike Certain Statement s in Respondent's Brief.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: 

Gerald T. Karr  
Senior Assistant Attorney General  
Environmental Bureau  
69 West Washington Street  
Suite 1800  
Chicago, Illinois 60602  
(312) 814-3369

**CERTIFICATE OF SERVICE**

I, GERALD T. KARR, an Assistant Attorney General in this case, do certify that on this 23<sup>rd</sup> day of March, 2009, I caused to be served by First Class Mail the foregoing Notice of Filing and Respondent's Response to Petitioner's Motion to Strike upon the individuals listed on the attached notice, by depositing the same in the U.S. Mail depository located at 100 West Randolph Street, Chicago, Illinois in an envelope with sufficient postage prepaid.

  
GERALD T. KARR