BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, Complainant, v. GENERAL WASTE SERVICES, INC., Respondent.	**PCB No. 07-45** (Enforcement)

NOTICE OF ELECTRONIC FILING

To: See attached Certificate of Service

PLEASE TAKE NOTICE that on December 3, 2010, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, *Respondent's Closing Argument and Post-Hearing Brief* and my *Certificate of Service*, copies of which are attached hereto and herewith served upon you.

Respectfully submitted,

GENERAL WASTE SERVICES, INC., Respondent

By: _____
Thomas J. Immel, Atty. Reg. #1301209

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CERTIFICATE OF SERVICE

The undersigned, of FELDMAN, WASSER, DRAPER & COX, hereby certifies that a copy of the Respondent's Closing Argument and Post-Hearing Brief and Notice of Electronic Filing was served upon the Attorney for Complainant by enclosing the same in an envelope plainly addressed to him, with postage fully prepaid, and depositing same in a U.S. Mail Box in Springfield, Illinois on this 3rd day of December, 2010:

Michael D. Mankowski
Illinois Attorney General's Office
Environmental Bureau
500 South 2nd Street
Springfield, IL 62706

And that on the same date the original Respondent's Closing Argument and Post-Hearing Brief, Notice of Electronic Filing & Certificate of Service was electronically filed by transmitting to:

John T. Therriault, Clerk
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 West Randolph
Chicago, IL 60601

And also by simultaneously emailing same to the aforesaid Michael D. Mankowski and to the Board's Hearing Officer, Carol Webb.

Thomas J. Immel

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RESPONDENT'S CLOSING ARGUMENT AND POST- HEARING BRIEF

Respondent, GENERAL WASTE SERVICES, INC. (hereinafter "GWS"), by its attorney, Thomas J. Immel, of Feldman, Wasser Draper and Cox, hereby presents its Closing Argument and Post-Hearing Brief in the above entitled matter.

I. INTRODUCTION

This matter has previously been before the Board on GWS's Motion for Summary Judgment. On September 30, 2008, the Board denied that Motion, finding that there were material issues of fact still to be resolved, and noting in its Order that GWS had *"presented facts that if proven would appear to refute the allegations of the complaint."* Since the entry of that Order, the parties have conducted discovery, taken multiple depositions, developed exhibits, and participated in a full hearing that consumed two days. GWS believes that the end result of that lengthy effort has been a persuasive showing that the allegations of the Complaint are indeed refuted, as will be more fully argued below.

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Complainant's (hereinafter "the State") post-hearing Brief contains portions that GWS agrees with: i.e., Burden of Proof (p.3), Applicable Statutes and Regulations (p.5). The State cites very few cases, and GWS will cite none. This is a matter which will necessarily be decided on an entirely factual basis. One matter of fact disagreement between the parties goes to whether the material observed being removed by GWS on the sole date of inspection by IEPA was asbestos containing material (ACM). If it was not (and IEPA's collected samples prove it was not), then the entire disputed question of whether it was "adequately wet" at the time of removal becomes a moot point because the material is *not regulated*. A lesser fact disagreement involves a single barrel of previously removed and drummed-for-disposal material that was ACM. Was it "adequately wet" as containerized? The IEPA inspector opined it wasn't. GWS's job foreman believed it was. That is **the whole case**.

Portions of the State's Brief (addressed further below) make it necessary to point out the distinction between an asbestos abatement *Consultant* and an abatement *Contractor*, a matter not discussed at hearing because the State's first apparent confusion on the subject is stated in its post-hearing Brief and was never exhibited earlier in the proceedings. *Consultants* are those persons or entities who advise property owners regarding environmental liabilities at their properties and identify required remediation. In a case such as this they are the ones who identified and tested for the presence of asbestos, defined the scope of abatement work to be performed, and aided the owner in putting the job out for bid. GWS is a *Contractor* that performs asbestos abatement. It acts only in response to an opportunity to bid an abatement job, takes the Consultant's report at face

value without question, and prices the work to the owner accordingly. Contractors do NOT seek to identify the presence of asbestos or conduct any testing of the material being removed. If awarded a contract, they start by filing a notice with IEPA that they are going to remove the identified, presumably ACM material. Then they build necessary containment structures, install negative air handling equipment, remove the material identified by the Consultant using a properly licensed work crew, and dispose of it off site as prescribed by law and regulation. While doing their *Contractor* work, air samples are being collected and analyzed by the *Consultant* to assure that ACM fibers are not being generated into the ambient air. GWS has never been a *Consultant*, restricting its activities solely to that of a *Contractor*.

The Board will note that there are two separate transcripts of the hearings held in October, 2009 and May, 2010, each individually paginated. Hereinafter the transcript of the 10/28/09 hearing will be cited to as *"Tr.Vol.1, p___"*, and the 5/11/10 transcript will be cited to as *"Tr.Vol.2, p___"*. By pre-hearing agreement of counsel, the parties used the same Exhibits at hearing and they were introduced into evidence without objection as "People's Exhibits 1 through 6".

II. STATEMENT OF FACTS

The State's short statement of "Factual Background" in its Brief (P.3-4), while not incorrect and generally acceptable for present purposes, is subject to the following caveats: 1) It should be noted that the Asbestos Inspection Report of Farmer Environmental Services (People's Exhibit 5) does NOT identify the testing locations for the seven (7) samples of "textured ceiling plaster" that earlier tested positive for ACM. Thus,

there is no way to tie them by location to the location were IEPA Inspector Zappa collected his samples on August 4, 2005 which tested Negative for ACM; 2) GWS's "notification form" to IEPA (People's Exhibit 2) of its intent to remove ACM uses the 6,714s/f figure provided by Farmer Environmental Services in Exhibit 5. Having done no testing of its own, GWS could only repeat what Consultant Farmer had reported, and that fact has rollover impact on the "Certification" at the foot of the form that GWS signed; 3) The State's Brief does not mention that the same Consultant conducted air sampling for ACM fibers throughout the building while the abatement work was ongoing. Those test results were provided to IEPA, accompanied by air clearance analysis by GWS at the completion of the project as a part of its final report (People's Exhibit 6), and demonstrate that no air standards were violated. At hearing, Inspector Zappa agreed that this was the case (Tr.Vol.1, p.70).

The Board will note that the State's Complaint in this cause alleges that GWS failed to adequately wet RACM material *while* it was being removed on August 4, 2005, the only day the IEPA Inspector was on site. The allegedly "too dry" ceiling material being removed by GWS did not contain asbestos, and was not RACM, as confirmed by two (2) samples of said ceiling material collected by Inspector Zappa on that date and tested by IEPA. Its lab reported that those two (2) test results were Negative for asbestos-containing material. Mr. Zappa collected a 3rd sample on August 4th from a closed drum of material that had been removed the previous day (when he was not there) and containerized. He opined that such material was not wet enough, but GWS's job supervisor disagreed. The material in the drum tested positive for ACM per the IEPA lab. During the course of discovery in this

matter, the State turned over to GWS the Chain of Custody and laboratory results for all three (3) samples collected by its Mr. Zappa on August 4, 2005, a true copy of which was previously attached to GWS's Motion for Summary Judgment as Exhibit A and incorporated by reference therein as though fully set forth. These materials were not re-introduced at hearing because the State does not contest the results of the sampling and the results are also summarized at the conclusion of People's Exhibit 3.

As noted above, the sole sample collected by the EPA Inspector that did test positive for ACM was collected from a stored leak proof drum of wetted material previously removed from another location in the building at a time and place remote from the area inspected on August 4, 2005, at which time and place the EPA Inspector was not even present. Nothing about the belated condition of the drummed material would or could speak to its degree of "wetness" at the time the material was gathered and placed in the drum.

Because the material collected and sampled in the actual work area was not ACM, and because the ACM sample found in the disposal drum in the waste storage area on site was already containerized for disposal, it becomes difficult to discern the basis for the Complaint's assertion that Section 9(a) of the Act or NESHAP might be violated, particularly in light of the fact that the IEPA Inspector's report states that ***"the containment that General Waste had constructed was excellent"***, (People's Exhibit 3, p.2.) Of course, it is the integrity of the containment that assures that any emissions of ACM are controlled or captured during the abatement process. And, as noted above, the air sampling results during the project are completely uneventful per People's Exhibit 6.

Instead of relying on the report of Farmer Environmental Services, Inspector Zappa decided to collect his own samples of material *being removed* to be **certain** that it was ACM, rather than simply "suspect" material (Tr.Vol.2, p.100-101). Again, the IEPA lab results confirm to a certainty that the material being removed in the Inspector's presence was NOT ACM. Notwithstanding, the instant case was filed. [No violations of AHERA regulations are asserted and AHERA is totally inapplicable in any event because the building in question was/is not a school. Rather it was an apartment building being converted into office space.]

III. ARGUMENT IN RESPONSE TO THE STATE'S BRIEF

The State's Argument is a prolix pastiche, stitched together in an effort to explain away the failure to establish a NESHAP case supposedly made by an IEPA Inspector who proved to be sensationally unaware that his *ad hoc* sampling effort would cut the heart out of the entire enterprise. Regarding the various arguments and assertions contained in the State's Brief, GWS responds as follows:

- Throughout the transcripts there are repeated references to the fact that GWS was removing ceilings at the time of Inspector Zappa's August 4, 2005 visit, which ceilings consisted of non-ACM drywall thinly coated with a textured material thought to be ACM. This coating had been painted, perhaps more than once, over the years and could not be penetrated by water or the surfactant GWS had on site. So to wet the material for removal it was sprayed with a mist of water and brought down for containerization. Due to prior historic damage, sometimes large sections of the drywall would let loose and fall without much prodding (see Tr.Vol.1, p.84, 96; Tr.Vol.2, p.38-39, 69).

➢ The building being abated was scheduled for renovation and existing wood floors were not to be disturbed or damaged. GWS covered them with poly to protect them and avoid getting them wet to the greatest extent possible, this being one of the reasons the impenetrable ceilings were being "misted" rather than being sprayed with a stream of water that might soak the room and damage the wood flooring. GWS did not want to incur liability for damaging the floors (Tr.Vol.2, p.19,34,40).

➢ Mr. Zappa clearly saw water being applied into leak proof drums of removed material, but wouldn't have necessarily seen evidence of the "misting" on material lying on the floor awaiting containerization (Tr.Vol.2, p. 38-40). For the same reason, there was no reason for him to see water splattered about the floors, and there wasn't.

➢ The State offers sinister insinuation that GWS's care in not damaging the floors was in reality a greedy attempt to *"save money during a cleanup"* (State's Brief, p.31). **Of course!** Just as *only* Greed could motive a person to return a rental car in undamaged conditions so as to comply with the rental contract and avoid having to pay damages. By contrast, *a good person*, exhibiting no Greed, trashes the car prior to return. Avis is hereby forewarned. There is no answer to the State's conundrum of aesthetics and morals, it having originated in some other moral universe; but a whiff of misrule enters the air.

➢ Inspector Zappa, who committed the only *uncontroverted* violation at the site on August 4, 2005 when he failed to shower upon leaving the building he was inspecting (Tr.Vol.1, p.72-74), proved to be an interesting and enthusiastic witness. Though he had misreported the number of negative air machines on the project (Tr.Vol.1, p.74), and didn't

know which regulations required construction of a containment for the work area (Tr.Vol.1, p. 75-77), and didn't bother to inspect the negative air equipment (Tr.Vol.1, p. 80), he nevertheless thought that GWS had done a fine job regarding its containment structures (see Peoples Ex.3). He stated that this was his first inspection of a GWS work site, though that wasn't correct. He been to two others, both uneventful (Tr.Vol.1, p.102, 111-12). He also testified that he didn't consider the term *"adequately wet"* as being a subjective concept, but rather objective in nature. But when confronted with his deposition testimony wherein he stated that the term was "subjective" his memory of the subject began to fade (Tr.Vol.1, p. 123-124). Concerning the relative permeability of the thin coat spray over the drywall backing, he testified on cross examination that material depicted in the photo at People's Exhibit 4dd only showed drummed material that was wetted from the backside (Tr.Vol.1, p.110), but on re-direct contradicted himself and said it depicted permeation of the thin coat on the front side (Tr.Vol.1, p.130), though it is literally impossible to conclude that from the picture. The overall certitude of his answers in direct testimony at hearing changed rather dramatically upon cross examination, and give rise to reasonable inquiry into his overall credibility, though credibility of the witnesses is not addressed in the Hearing Officers "Hearing Report", filed with the Board Clerk on May 11, 2010. At the time of the inspection he'd been with IEPA for six years and moved from Springfield down to the Collinsville office from which he was thereafter based. Prior to his employment with the Agency, he had been an asbestos laborer when not in prison after being convicted of a felony. When the undersigned commenced to raise this fact during cross-examination the State vigorously objected and the Hearing Officer became involved in a colloquy

commencing at Tr.Vol.1, p. 117, at the conclusion of which the Hearing Officer ruled that the matter would have to be resolved by the Board and that GWS would only be permitted to make an offer of proof regarding the testimony it was trying to elicit. That was done at page 120: to wit (and summarizing), *that if Mr. Zappa were asked – and answered truthfully – he would acknowledge that in 1995 he had been indicted in Springfield for four (4) felonies involving narcotics, thereafter pled guilty to a single felony of engaging in a drug conspiracy with the remaining three charges being dropped, and was sentenced to a term in the penitentiary. The matters involved the transportation of cocaine through the U.S. mails. He subsequently had been in four different drug rehabilitation programs.* There is not the slightest doubt that engaging in a "drug conspiracy" is a crime evidencing moral turpitude that could impact upon one's credibility as a witness in any proceeding and is the subject of fair inquiry when that person is to be placed under oath. GWS was not allowed to ask these questions, receive answers, and ask the follow-up questions which would have necessarily followed, all intended to probe further into credibility issues, because the Hearing Officer would not permit any questions, instead confining GWS to making an offer of proof in the form of a statement only. This is an unfortunately messy business, which is precisely why persons burdened with Mr. Zappa's history stay away from witness stands, but the State was willing to throw him into the mosh pit. It cannot be stated with certitude that the August 2005 inspection happened more than 10 years after Mr. Zappa was released from prison or parole (though GWS believes it did not), because the Hearing Officer foreclosed the opportunity to ask those questions. In any event, at this point GWS presumes the Board will probably decide this matter without further inquiry into Mr. Zappa's

past. It can only be hoped that hereafter there might be further clarity as to how this sort of issue will be handled at hearings, because what occurred was downright cumbersome.

➢ The State chooses to speculate as to why the two samples Zappa collected in the work area on August 4, 2005 would have come back negative for asbestos (again, see People's Ex.3) and opines that he may have collected samples *"that did not include a layer of material that actually contained asbestos"* (Brief, p. 18). But, to the contrary, Mr. Zappa testified with confidence that he collected good representative samples (Tr.Vol.1, p. 85), and Photo 4s in People's Ex. 4, depicting sample bag #1, clearly shows that the "suspect" thin coat layer of sprayed on material was bagged for lab analysis. The State is wrong.

➢ In support of its argument that the ceilings within the building should be treated as "homogeneous" and that inquiry beyond Consultant Farmer Environmental Services' report is not called for, the State invites this Board to make two serious errors: 1) First, because the term "Homogeneous" is used within the Farmer report (People's Ex. 5), the State would have all inquiry stop at that point – without learning out why Farmer chose to use that word in a NESHAP context where it has no regulatory meaning, or whether Farmer (which has done a lot of school work under AHERA regulations not applicable to this project) may have used the term out of habit because it <u>does</u> have meaning on school projects. It was the State's burden to make those inquiries of non-party Farmer Environmental Services; but evidently it didn't try and obviously never contacted Farmer at all during the pendency of this case. They really needed a witness from Farmer, but none was called. Regardless, as conceded in its Brief, the State knows that "homogenous areas"

is not a term of art applicable to the NESHAP regulations under which this case is brought, and that the term itself – or even a definition thereof – is nowhere to be found within NESHAP; and, 2) In a "what the heck" argument, the State actually contends that this Board should simply treat the AHERA regulations as correlative and import them into NESHAP so as to help make a case for the State by providing an otherwise missing definition of "homogeneous area" to bypass the devastating negative sample results collected by Zappa in the work areas, and to give the State room to argue that the bad results can simply be ignored. "Let the Board take the heat" seems to be the thrust of their sales effort for this defective 3-D solar powered prosthetic nose of an argument, and the Board should not allow the State to get by with it, given the Board's judicial rather than "helping hand" role in this enforcement case. AHERA and its internal provisions are specifically and exclusively applicable to school buildings, which the State is forced to concede in its Brief. And there is not a smidgen of "legislative Intent" to be found anywhere that AHERA is to be treated interchangeably or transpositionily with NESHAP. The State has simply made this up in a deracinating moment and is entitled to no kudos for the effort. In point of plain fact, the State wishes to have the Farmer positive sample results collected from unknown areas in the project serve to Trump the Two Jokers dealt them by the Zappa sample results collected from two *known* work areas. Using the inapplicable AHERA methodology the State would extrapolate the Farmer unknowns to the entire building, but NOT have the Zappa "knowns" extrapolated to the specific and limited work areas in which they were collected. What's sauce for the goose is sauce for the gander but not as far as the State is concerned if it undercuts its case. Frankly, had the State simply relied on the

Farmer report and Zappa collected no damaging samples, there would have been no argument over whether the materials being removed were ACM because GWS had no sample results of its own and Farmer's results would have been "the only game in town". The case would have been limited to the "adequate wetting" issue and greatly simplified from a litigation (and settlement) standpoint. Zappa changed all that and we don't know why. But, the Zappa results – fairly regarded – prove that the material being removed in the two specific work areas he sampled did not qualify as RACM and that the "adequately wet" regulations do not even apply.

➢ That then takes us to the single positive sample result he obtained from a drum he opened in the load out area of the building that contained materials removed from another location on the site and packed up at least the day before the Zappa inspection. This is sample #3 referenced in People's Ex. 3. Zappa testified that the material was too dry. GWS witness and non-felon job supervisor Calvin Johnson didn't agree. Regrettably, he was not actually present when Zappa sampled the closed drum because Zappa had ordered all GWS employees outside. Only after they were gone did he collect his samples (?) and he did not follow the common practice of offering to split them with GWS (??). Sample #3 is interesting for a couple of reasons. First, because Zappa collected it in private, GWS could not see what he was looking at during the sampling effort and, like everyone else, can only look at two rather lousy pictures of the drum being sampled. Zappa's slightly out of focus Photo 4z supposedly shows material at the top of the drum which is quite discolored and otherwise unremarkable. Calvin Johnson said water had been hosed into all the drums being prepared for shipment off site, and Zappa did not probe

down into the drum to determine the dampness level of the materials below the immediate surface. But, the obvious discoloration of the material is consistent with what Zappa continually described in his testimony as being evidence of wetting. Photo 4aa is a picture of the sample bag for Sample #3 and is terribly out of focus. But, presuming it's the same drum as depicted in Photo 4z, it shows the same discolored material with the sample bag lying on top. Another interesting point is the manner in which the lab physically described Sample #3. They call the sample *"Gray in color"* (See People's Ex.3), which is the color you would expect if the material had been wetted down prior to sample collection according to the complete testimony Zappa offered at the hearing. Also, the percentage of asbestos found by the lab in Sample #3 is "1% – 5%". But Farmer Environmental Services never encountered less that 20% in any of their samples. Thus, we are now looking at yet a 3rd sample that deviates from the homogeneity theory the State has been trying to sell. Having made sure that no one could see what he was looking at while collecting Sample #3 and not split the sample with GWS, Mr. Zappa places the usefulness of Sample#3 in serious question regarding the issue of "wetting"; and having no idea what (or where) Zappa sampled during his private moments GWS could not have retraced his steps and later collected samples of its own. By the time they heard back from anyone all the evidence was buried in the Roxanna Landfill.

- The State's Brief correctly quotes from the NESHAP definition of **"adequately wet"** at page 25 of its Brief during the course of arguing that the term is an objective standard and that it is a "clear" definition. That is a perfectly sound argument unless you happen to read the quoted definition, in particular the portion that says: *"If*

visible emissions are observed coming from asbestos-containing material, then that material has not been adequately wetted. However, the absence of visible emissions is not sufficient evidence of being adequately wet." Clear? Objective?? What??? How in the world can one advance that argument with a straight face? What is "clear" is that what the definition provides with the Right hand is promptly taken away with the Left. What is "adequately wet" in the absence of a visible emission (there being none reported in this case) is left entirely to the mind of the beholder. Mr. Zappa told the truth in his deposition when he said the matter was subjective and then did an about face at hearing until tripped up as noted above. Calvin Johnson accurately noted that what's "adequately wet" seemed to vary from inspector to inspector. Zappa did not handle material and break it to see if emissions emerged, and the air monitoring ongoing did not detect regulated levels of asbestos in the ambient air while work was being performed by GWS or thereafter. Yes, asbestos fibers are not readily seen by the naked eye, but the dust and other emissions that entrain the fibers <u>are</u> readily visible. Thus the regulatory language *"If visible emissions are observed coming from asbestos-containing material, then that material has not been adequately wetted."* What we have *<u>here</u>* is a case involving the next sentence of the definition which throws any concept of objectivity into a cocked hat: "*However, the absence of visible emissions is not sufficient evidence of being adequately wet."* <u>There's</u> the rub, and it is ***this*** case. Mr. Zappa eyeballed everything in his inspection and injected considerable hyperbole into his narrative along the way.

➢ The State has quoted at some length or cited in its Brief from the testimony of GWS witnesses Calvin Johnson and Kenneth Stevens. So far as the undersigned has

noticed and read, the State has done so accurately. It is clear that these two experienced employees knew what they were supposed to be doing and did exactly that on the job site. Stevens' placement of additional water into the drummed material was hardly "too late". Rather it is a part of the "better safe than sorry" approach that GWS has followed since its inception in 1985 that has resulted in its never being cited for a violation until this 2005 incident. Making doubly sure that the containers bound for the landfill hold wetted material is sound public and company policy. It's never "to late" to add some extra water to the containers going off site until such time as they are finally sealed for transport. Only at that point is it a "done deal". The Board simply needs to read the full testimony of Johnson and Stevens to find out what was really going on at the site, all of it being quite straightforward and free of editorial comment. Then, simply compare it with that of Mr. Zappa. The difference is noticeable.

➢ As it should, the State's brief discusses its proposed penalty and the Section 33(c) factors this Board is to consider under the Act as regards the penalty issue. Of course, GWS contends and believes it has demonstrated that no violations occurred on this project, and that the Board should find for GWS. Thus, no penalty would be imposed in any event. But, necessarily, GWS wishes to address the Section 33(c) factors that the State has discussed. There was absolutely no showing at hearing that there was any actual injury to "the public" or anyone at all on August 4, 2005 as a result of any activity conducted at the job site. The State's comment that such injury would have been "minimal" is as close as it can come to agreeing with GWS's position in this regard. Likewise, there having been no environmental impact whatever as a result of anything done at the job site

on that day in 2005, there is no way to contend that the social or economic value of the building was impaired in any way. Next, the State's Brief fails to correctly address the Section 33(c)(iii) factor, but it is safe to say that the building in question is not unsuitable to the area in which it is and has been located for over 50 years. Next, as to technical practicability of compliance, there is no evidence that GWS created a risk of releasing contaminants into the environment, and all the air sampling data in the record proves that the opposite was the case. Finally, there is no suggestion of any non-compliance by GWS on any working day after the date of inspection, and no IEPA inspector was on the premises any day thereafter.

The State then addresses the seven (7) factors to be considered by the Board under Section 42(h) of the Act. [1] The State says the violation was limited to 2 days and that this short duration should mitigate the gravity component of the Board's penalty calculation. GWS contends there was no violation – zero gravity. [2] The State says that GWS acted diligently to come into compliance. GWS contends that it was never out of compliance. [3] The State says GWS realized no economic benefit from non-compliance. That is true but for the fact that there was no non-compliance. [4] The State asserts that a $30,000 penalty is necessary to deter future violations by GWS. There having been no violation to begin with, GWS totally disagrees and seeks a finding in its favor by the Board on the State's complaint. [5] The State notes that GWS has no prior violations and that is correct. Never in the company's now 25 year history. [6] The State says GWS did not voluntarily disclose its non-compliance. GWS responds that there was nothing to self-

disclose, there being no violation. [7] This is the SEP factor, which the State says in inapplicable to this case. GWS agrees with that statement.

IV. CONCLUSION

The State's complaint against GWS looked simple and straightforward on its face at the time it was filed. But subsequent events described hereinabove turned it into an untidy collection of dashed hopes and tainted aspirations. There was no case after all and only poor judgment on the State's side allowed it to go on and on. The resources of both parties were expended needlessly by persnickety background figures. Everything they alleged was wrong and proven to be so; but never mind so far as they are concerned. *Ergo*, all this results in a 45 page (!) "brief" by their unfortunate attorney in a hopeless attempt to support a collapsing soufflé, and the absolutely wild suggestion that $30,000 is a *"moderate"* proposed penalty for this Board to impose. This phantasm must end. There was no proof that RACM was being mishandled on August 4, 2005. Indeed the State voluntarily proved that the material inspected on that date was not even RACM to begin with. So, it could have been bone dry and still been in full compliance. But, incidentally, it was adequately wetted anyway. Previously wetted material found in a drum packaged before the inspection date is found to contain RACM. Good! The very thing we were looking for, and we finally found some. But, alas, no violation of any regulation. This has to be one of the worst enforcement cases ever to reach the decision stage and be dumped upon this Board. Hopefully, the Board will treat it accordingly.

WHEREFORE, Respondent prays that this Honorable Board find for the Respondent and against Complainant in the instant case; that the above entitled Complaint be dismissed with prejudice; and that Respondent be awarded its costs.

Respectfully submitted,

GENERAL WASTE SERVICES, INC., Respondent

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