

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. LISA MADIGAN, Attorney)
 General of the State of Illinois,)
)
 Complainant,)
)
 v.)
)
 SHERIDAN-JOLIET LAND)
 DEVELOPMENT, LLC, an Illinois)
 limited liability company, and)
 SHERIDAN SAND & GRAVEL CO.,)
 an Illinois corporation,)
)
 Respondents.)

PCB No. 13-20
 (Enforcement-Land)

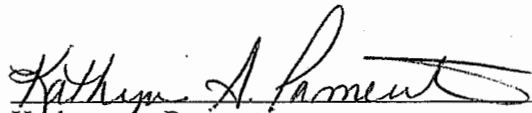
NOTICE OF MOTION

To: ***Via Regular Mail***
 Kenneth Anspach, Esq.
 Anspach Law Office
 111 West Washington Street
 Suite 1625
 Chicago, Illinois 60602

Via E-Mail
 Bradley P. Halloran
 Hearing Officer
 Illinois Pollution Control Board
 James R. Thompson Center, Suite 11-500
 100 W. Randolph Street
 Chicago, Illinois 60601
 Brad.Halloran@illinois.gov

PLEASE TAKE NOTICE that on the 17th day of April, 2013, the Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, filed the attached Motion for Leave to File Surreply, a true and correct copy of which is attached hereto and is hereby served upon you.

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN, Attorney General
 of the State of Illinois

By: 
 Kathryn A. Pamentér
 Assistant Attorney General
 Environmental Bureau
 69 W. Washington St., 18th Floor
 Chicago, IL 60602
 (312) 814-0608

DATE: April 17, 2013

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. 13-20
)	(Enforcement - Land)
SHERIDAN-JOLIET LAND)	
DEVELOPMENT, LLC, an Illinois)	
limited-liability company, and SHERIDAN)	
SAND & GRAVEL CO., an Illinois)	
corporation,)	
)	
Respondents.)	

COMPLAINANT’S MOTION FOR LEAVE TO FILE SURREPLY

Complainant, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, pursuant to 35 Ill. Adm. Code 101.500(e), hereby moves this Court for leave to file a surreply to SHERIDAN-JOLIET LAND DEVELOPMENT, LLC’s and SHERIDAN SAND & GRAVEL CO.’s (“Respondents”) Reply in Support of Motion to Strike and Dismiss. In support of its motion, Complainant states as follows:

1. On October 31, 2012, Complainant filed a four-count Complaint (the “Complaint”) against the Respondents, alleging violations of the Illinois Environmental Protection Act (“Act”) and the Illinois Pollution Control Board’s regulations regarding clean construction or demolition debris fill operations (“Board CCDD Regulations”).

2. On November 30, 2012, the Respondents filed their Motion to Strike and Dismiss and Supporting Memorandum (“Motion to Dismiss”).

3. On February 27, 2013, the Complainant filed its Response to the Respondents’ Motion to Dismiss, which is incorporated herein by reference.

4. On April 12, 2013, the Respondents filed their Reply in Support of Motion to Strike and Dismiss ("Reply"), in which they argue for the first time that Section 49(e) of the Act, 415 ILCS 5/49(e) (2012), supports dismissal of the Complaint. (Reply at p. 4.)

5. In the absence of an opportunity to file a Surreply to the Respondents' Reply in Support of Motion to Strike and Dismiss, the Complainant will be materially prejudiced.

6. The Complainant has prepared a Surreply that responds to the Respondents' new argument. A copy of the proposed Surreply is attached hereto as Exhibit A. By this Motion, the Complainant seeks leave to file its Surreply with the Illinois Pollution Control Board to avoid material prejudice.

WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board grant it leave to file its Surreply to Respondents' Reply in Support of Motion to Strike and Dismiss and such other relief as the Board deems proper.

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN, Attorney
General of the State of Illinois

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

By:



KATHRYN A. PAMENTER
Assistant Attorney General
Environmental Bureau
69 W. Washington, 18th Floor
Chicago, Illinois 60602
(312) 814-0608

EXHIBIT A

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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COMPLAINANT’S SURREPLY TO RESPONDENTS’ REPLY IN SUPPORT OF MOTION TO STRIKE AND DISMISS

Complainant, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, for its Surreply to SHERIDAN-JOLIET LAND DEVELOPMENT, LLC’s and SHERIDAN SAND & GRAVEL CO.’s (“Respondents”) Reply in Support of Motion to Strike and Dismiss, hereby states as follows:

1. On April 12, 2013, the Respondents filed their Reply in Support of Motion to Strike and Dismiss, in which the Respondents argue for the first time that Section 49(e) of the Illinois Environmental Protection Act (the “Act”), 415 ILCS 5/49(e) (2012), supports dismissal of the Complaint pending against them. (Respondents’ Reply in Support of Motion to Strike and Dismiss at p. 4.)

2. Section 49(e) of the Act provides that, “[c]ompliance with the rules and regulations promulgated by the Board under this Act shall constitute a prima facie defense to any action, legal, equitable, or criminal, or an administrative proceeding for a violation of this Act, brought by any person.” 415 ILCS 5/49(e) (2012). Contrary to the Respondents’ implication,

“[c]ompliance with the regulations is a prima facie defense but it is not a complete defense.”

Lloyd A. Fry Roofing Company v. Pollution Control Board, 20 Ill. App. 3d 301, 310 (1st Dist. 1974).

3. The Respondents’ argument also ignores Section 33(a) of the Act, 415 ILCS 5/33(a) (2012), which provides that:

It shall not be a defense to findings of violations of the provisions of this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order, or a bar to the assessment of civil penalties that the person has come into compliance subsequent to the violation. . . .

415 ILCS 5/33(a) (2012). Based upon the express terms of the statute, the Respondents’ subsequent compliance with the Act and the Illinois Pollution Control Board’s (the “Board”) regulations does not preclude the Board’s assessment of civil penalties against the Respondents.

4. Similarly, in *People v. Sheridan Sand & Gravel Co.*, PCB 06-177, 2007 WL 1816057 (June 7, 2007), the Board considered whether subsequent compliance constituted an affirmative defense. The Board stated:

Further, to the extent that the second alleged affirmative defense alleges that there has been subsequent compliance, the Board also finds the defense must be stricken. The Board has long held that defense of subsequent compliance speaks to the factors of Section 33(c) of the Act, which the Board considers when determining the appropriate penalty.

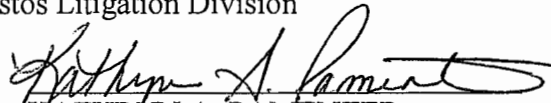
2007 WL 1816057, at *13. Accordingly, the Respondents’ subsequent compliance does not serve as a basis for dismissal of the Complaint.

WHEREFORE, based upon the foregoing and its Response to the Respondents' Motion to Strike and Dismiss, which is incorporated herein by reference, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board deny the Respondents' Motion to Strike and Dismiss and grant such other relief as the Board deems proper.

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN, Attorney
General of the State of Illinois

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

By:



KATHRYN A. PAMENTER
Assistant Attorney General
Environmental Bureau
69 W. Washington, 18th Floor
Chicago, Illinois 60602
(312) 814-0608

CERTIFICATE OF SERVICE

I, KATHRYN A. PAMENTER, an Assistant Attorney General, do certify that I caused to be served this 17th day of April, 2013, the attached Notice of Motion and Motion for Leave to File Surreply upon (a) Kenneth Anspach, Esq. by placing a true and correct copy in an envelope addressed as set forth on said Notice of Motion, first class postage prepaid, and depositing same with the United States Postal Service at 100 West Randolph Street, Chicago, Illinois, at or before the hour of 5:00 p.m., and (b) Bradley P. Halloran via e-mail.


KATHRYN A. PAMENTER