

**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)

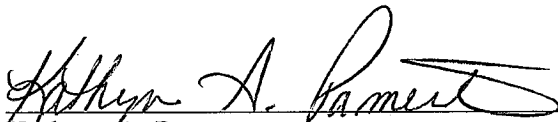
**NOTICE OF MOTION**

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 10th day of May, 2013, the Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, filed the attached Motion to Strike Respondents' Objections to the State's 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. Pamenter  
 Assistant Attorney General  
 Environmental Bureau  
 69 W. Washington St., 18<sup>th</sup> Floor  
 Chicago, IL 60602  
 (312) 814-0608

DATE: May 10, 2013

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS	)	
by LISA MADIGAN, Attorney General	)	
of the State of Illinois,	)	
	)	
Complainant,	)	
	)	
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 TO STRIKE RESPONDENTS’ OBJECTIONS TO THE STATE’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 101.100, 101.500 and 101.506 and 735 ILCS 2-615, hereby moves this Board to strike Sheridan-Joliet Land Development, LLC’s and Sheridan Sand & Gravel Co.’s (“Respondents”) Objections to the State’s Motion for Leave to File Surreply. In support, Complainant states as follows:

1. On October 31, 2012, the 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”). On November 30, 2012, the Respondents filed their Motion to Strike and Dismiss and Supporting Memorandum (“Motion to Dismiss”). On February 27, 2013, the Complainant filed its Response to the Respondents’ Motion to Dismiss (“Response to Motion to Dismiss”), which is incorporated herein by reference.

2. On April 12, 2013, the Respondents filed their Reply in Support of Motion to Strike and Dismiss (“Reply to Motion to Dismiss”).

3. On April 17, 2013, the Complainant filed its Motion for Leave to File Surreply, arguing that the Respondents raised Section 49(e) of the Act, 415 ILCS 5/49(e) (2012), for the first time in their Reply to Motion to Dismiss. The Complainant’s three-page, four-paragraph proposed Surreply only addresses Section 49(e) of the Act, 415 ILCS 5/49(e) (2012).

4. On April 26, 2013, the Respondents filed a five-page pleading entitled Objections to the State’s Motion for Leave to File Surreply (the “Objections”).

5. As authority for filing the Objections, the Respondents cite 35 Ill. Adm. Code 101.100. (Objections at p. 1.) However, Section 101.100 entitled “Applicability” of the Board’s General Rules states that the rules “should be read in conjunction with procedural rules for the Board’s specific processes found at 35 Ill. Adm. Code 102 through 130, and the Board’s Administrative Rules, found at 2 Ill. Adm. Code 2175,” and “the Board may look to the Code of Civil Procedure and the Supreme Court Rules for guidance where the Board’s procedural rules are silent.” 35 Ill. Adm. Code 101.100. Section 101.100 does not address filing “objections” to a motion for leave to file a surreply.

6. In addition, the Respondents’ Objections are more akin to a response to the Complainant’s proposed Surreply, for which leave to file was neither sought nor granted. *See* 35 Ill. Adm. Code 101.500(e). In Paragraphs 1-5 and 9-14 of the Objections, the Respondents’ impermissibly reargue their Reply to Motion to Dismiss. (Objections at pp. 1-5.) Similarly, in Paragraphs 5 and 11 and footnotes 2 and 3, the Respondents accuse the Complainant of failing to make certain arguments in its proposed Surreply. (*Id.* at p. 4.) However, the Complainant was not permitted to do so. The purpose of a surreply is to prevent “material prejudice,” by

addressing arguments raised for the first time, or mischaracterizations of a parties' pleading or existing case law, in a reply. 35 Ill. Adm. Code 101.500(e). Further, without leave, Paragraphs 6-8 of the Objections constitute argument.<sup>1</sup>

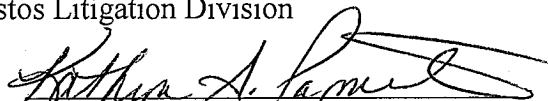
7. In Paragraph 15 of the Objections, the Respondents contend that they did not make a new argument in their Reply to Motion to Dismiss, which warranted the filing of a proposed Surreply. Yet, the Respondents do not dispute that the applicability of Section 49(e) of the Act, 415 ILCS 5/49(e) (2012), was raised for the first time in their Reply to Motion to Dismiss. The Complainant's proposed Surreply only addresses that issue.

WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Illinois Pollution Control Board strike the Respondents' Objections to the State's Motion for Leave to File Surreply 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:



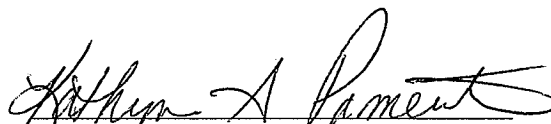
KATHRYN A. PAMENTER  
Assistant Attorney General  
Environmental Bureau  
69 W. Washington, 18<sup>th</sup> Floor  
Chicago, Illinois 60602  
(312) 814-0608

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<sup>1</sup> The Respondents contend that they have "never argued that it has come into 'subsequent compliance.'" (Objections at p. 3.) That the Respondents could only come into compliance with the Act subsequent to their violation of the Act is the Complainant's argument in response to the Respondents' citation to Section 49(e) of the Act for the first time in their Reply to Motion to Dismiss. (See proposed Surreply at p. 2.)

**CERTIFICATE OF SERVICE**

I, KATHRYN A. PAMENTER, an Assistant Attorney General, do certify that I caused to be served the 10th day of May, 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