

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB No. 13-20
)
SHERIDAN-JOLIET LAND)
DEVELOPMENT, LLC, an Illinois limited-)
liability company, and SHERIDAN SAND)
& GRAVEL CO.,)
)
Respondents.)

OBJECTIONS TO COMPLAINANT'S MOTION TO STRIKE RESPONDENTS'
OBJECTIONS TO THE STATE'S MOTION FOR LEAVE TO FILE SURREPLY

Respondents, SHERIDAN-JOLIET LAND DEVELOPMENT, LLC, an Illinois limited-liability company, and SHERIDAN SAND & GRAVEL CO. (collectively "SHERIDAN"), by their attorney, Kenneth Anspach, pursuant to Sections 101.100 and 101.500(d) of the General Rules of the Pollution Control Board ("General Rules"), 35 Ill. Adm. Code 101.100 and 101.500(d), hereby object to Complainant's Motion to Strike Respondents' Objections to the State's Motion for Leave to File Surreply (the "STATE's Motion to Strike Objections") filed by complainant, PEOPLE OF THE STATE OF ILLINOIS (the "STATE") and requests that it be denied, and further requests the correction of a scrivener's error as more fully set forth hereinbelow, and in support thereof states as follows:

1. On November 30, 2012 SHERIDAN filed a Motion to Strike and Dismiss in the above cause. The STATE filed a response and SHERIDAN filed a reply. Accordingly, the Motion to Strike and Dismiss was fully briefed as of April 12, 2013.

2. On April 17, 2013 the STATE filed a Motion for Leave to File Surreply. On April 29, 2013 SHERIDAN filed Objections to the State's Motion for Leave to File Surreply

(“SHERIDAN’s Objections to Motion for Leave to File Surreply”). SHERIDAN’s Objections to Motion for Leave to File Surreply simply pointed out that no surreply was necessary because the STATE’s attempted Surreply was an exercise in replying to an argument that was never made.

2. It is well known that the filing of objections to a motion is authorized under Section 101.500(d) of the General Rules, 35 Ill. Adm. 101.500(d). Section 100.500(d) specifically authorizes “a party [to] file a response to [any] motion.” Thus, there is no question that SHERIDAN’s filing of SHERIDAN’s Objections to Motion for Leave to File Surreply *was authorized*.

3. Yet, the STATE has moved to strike SHERIDAN’s Objections to Motion for Leave to File Surreply on the basis that the wrong section of the General Rules was cited as authority for the filing of SHERIDAN’s Objections to Motion for Leave to File Surreply.¹ SHERIDAN had cited Section 101.100 of the General Rules instead of Section 101.500(d) of the General Rules.

4. Given that Section 101.500(d) of the General Rules was not cited, SHERIDAN requests that the Board, by this reference thereto, find that this scrivener’s error is hereby corrected by the addition of a citation to “Section 101.500(d) of the General Rules, 35 Ill. Adm. 101.500(d)” to the face of SHERIDAN’s Objections to Motion for Leave to File Surreply, *instanter*.

5. Regardless of whether the correct reference was cited in SHERIDAN’s Objections to Motion for Leave to File Surreply, authority unquestionably lies in Section 101.500(d) of the General Rules for the filing of SHERIDAN’s Objections to Motion for Leave to File Surreply.

6. The Motion to Strike and Dismiss is fully briefed and awaits a ruling by the Board. Query whether the filing of serial motions by the STATE antedating the completion of the

¹ STATE’s Motion to Strike Objections, par. 5.

briefing on the Motion to Strike and Dismiss moves this case forward in any fashion, whatsoever?

7. Further, while the STATE is quick to point out SHERIDAN scrivener's error, the STATE does not provide any valid authority for the filing of the STATE's Motion to Strike Objections, itself. Nothing in the General Rules allows the striking of objections, such as SHERIDAN's Objections to Motion for Leave to File Surreply, validly filed under Section 101.500(d) of the General Rules.

8. In purported support of the filing of the STATE's Motion to Strike Objections, the STATE cites Section 101.100, the *very same* section of the General Rules it criticized SHERIDAN for using as a basis for filing SHERIDAN's Objections to Motion for Leave to File Surreply.

9. The STATE also cites Section 101.500 in purported support of the filing of the STATE's Motion to Strike Objections, which merely allows the filing of "any motion the parties wish to file that is permissible under the Act or other applicable law." So, Section 101.500 does *not* authorize the filing of a motion that is, itself, impermissible.


10. The STATE further cites as purported authority Section 101.506 of the General Rules and 735 ILCS 5/2-615, both of which authorize the striking of "*pleadings*." (Emphasis added.) SHERIDAN hardly needs to point out that objections to a motion are not "*pleadings*." It is well settled in this State that "Section 2-615 applies only to the dismissal of pleadings." *In re Marriage of Sutherland*, 251 Ill. App. 3d 411, 414 (2nd Dist. 1993).

WHEREFORE, upon the above and foregoing:

(1) SHERIDAN objects to STATE's Motion to Strike Objections and requests that it be denied; and

(2) SHERIDAN requests that the Board, by this reference thereto, find that the scrivener's error in SHERIDAN's Objections to Motion for Leave to File Surreply is hereby corrected by the addition of a citation to "Section 101.500(d) of the General Rules, 35 Ill. Adm. 101.500(d)" to the face of SHERIDAN's Objections to Motion for Leave to File Surreply, instanter.

Respondents, SHERIDAN-JOLIET LAND DEVELOPMENT, LLC, an Illinois limited-liability company, and SHERIDAN SAND & GRAVEL CO.,

By: 
their attorney

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THIS FILING IS SUBMITTED ON RECYCLED PAPER.

CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalties of perjury as provided by law pursuant to 735 ILCS 5/1-109, that the Attached Objections to Complainant's Motion To Strike Respondents' Objections to the State's Motion For Leave To File Surreply was personally delivered, X placed in the U. S. Mail, with first class postage prepaid, sent via facsimile and directed to all parties of record at the address(es) set forth below on or before 5:00 p.m. on the 24th day of May, 2013.

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