

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
Complainant,)	
)	PCB No. 12-21
v.)	(Enforcement - Land)
)	
INTRA-PLANT MAINTENANCE)	
CORPORATION, an Illinois corporation,)	
IRONHUSTLER EXCAVATING, INC.,)	
an Illinois corporation, and)	
RON BRIGHT, d/b/a Quarter Construction,)	
)	
Respondents.)	

NOTICE OF ELECTRONIC FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on September 15, 2013, I electronically filed with the Office of Clerk of the Pollution Control Board **RESPONDENTS' MOTION FOR LEAVE TO REPLY TO COMPLAINANT'S RESPONSE TO MOTION TO RECONSIDER AND MODIFY BOARD ORDER** on behalf of Respondents IRONHUSTLER EXCAVATING, INC., and RON BRIGHT, d/b/a Quarter Construction, a copy of each of which is herewith served upon you.

Respectfully submitted,

\s\ *Thomas J. Immel*
 Thomas J. Immel
 Feldman Wasser Draper & Cox
 PO Box 2418
 1307 South Seventh Street
 Springfield, Illinois 62705
 (217) 544-3403
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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the foregoing Notice of Electronic Filing has been served upon the following persons by placing the same in a sealed envelope, addressed as stated, with First Class postage fully prepaid and by depositing the same in the United States mail at Springfield, Illinois this 15th day of September, 2013:

Charles M. Rock
Hassellberg Rock Bell & Kuppler, LLP
4600 North Brandywine Dr.
Suite 200
Peoria, IL 61614

Raymond Callery, AAG – Environmental
Office of the Illinois Attorney General
500 South Second Street
Springfield, IL 62706

Carol Webb, Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
PO Box 19274
Springfield, IL 62794-9274

and electronically filed with the Clerk of the Pollution Control Board on the same date.

\s\ *Thomas J. Immel*

Thomas J. Immel

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RESPONDENTS' MOTION FOR LEAVE TO REPLY TO COMPLAINANT'S RESPONSE TO MOTION TO RECONSIDER AND MODIFY BOARD ORDER

NOW COME Respondents, IRONHUSTLER EXCAVATING, INC., an Illinois corporation, and RON BRIGHT, d/b/a Quarter Construction (hereinafter "Respondents"), by their undersigned attorney, and for their Motion for Leave to Reply to Complainant's Response to Respondents' pending Motion to Reconsider and Modify the Order of this Board entered on July 25, 2013, said Reply being set forth herein, state as follows:

1. Complainant's Response objects to the granting of Respondents' pending Motion to Reconsider the Board's Order of July 25, 2013. Said Response was received by the undersigned on September 5, 2013.
2. Respondents' pending Motion to Reconsider is a verified pleading. Complainant's Response (objections) is not, and does not *in any way* controvert the verified factual statements set forth in the Motion to Reconsider; but does contain

statements to which a brief reply by Respondents is appropriate, and which reply is set forth hereinafter.

3. Section 101.522 of the Board's procedural rules provides that *"The Board or hearing officer, for good cause shown on a motion after notice to the opposite party, may extend the time for filing any document or doing any act which is required by these rules to be done within a limited period, either before or after the expiration of time."*

4. Here, the Respondent sought additional time to respond to the pending Motion for Summary Judgment when protracted and recurring health issues severely impaired the undersigned's ability to meet time deadlines for the filing of a responsive pleading in this matter (and others). "Good Cause" for the requested extension was shown and the subject of conversation with the Hearing Office and opposing Counsel. The requirements of the Board's rule were clearly met. Notwithstanding, telephonically articulated, but never-heard-of before, "policies" left the undersigned in the position of filing the pleading "as soon as possible" accompanied by an Instanter Motion. That has now been done. Complainant never asserted any prejudice it might suffer if the requested extension were granted, and the Hearing Office never found or mentioned any, instead finding that an extension could not be granted if the Complainant objected. Thus, per this "policy", it is the Complainant, not the Board, which determines whether an extension is granted and the Board's procedural rules (quoted above) are reduced to a nullity.

5. Complainant's Response to the pending Motion to Reconsider is 8 pages in length, fully ½ page of which is devoted to the pending Motion with the balance devoted to attacking the Respondents' companion – but unrelated – objections to the Complainant's Motion for Summary Judgment. In short, Complainant's Response is no more than a “head fake”.

6. The Respondent's Motion to Reconsider is based entirely upon the procedural situation which surrounds the entry of the Board's surprise Order of July 25th and the fact that the undersigned was operating under the honest belief that he was to file Respondents' pleading by August 8th, accompanied by an Instanter motion, which would have happened but for the entry of the Board's unexpected (by everyone but the Board itself) Order of July 25th. Board language contained within said Order dictated further editing of the Respondents' final pleading and two attached affidavits.

7. For purposes of the pending Motion to Reconsider the sole issue is whether the Board should Reconsider based upon the obvious procedural situation extant on July 25th and allow the Respondents' summary judgment arguments and evidence to be considered by the Board before rendering a substantive decision. The question of whether the July 25th Order was “right or wrong” on the merits can only be addressed after the Board considers Respondents' Objections to Complainant's Motion for Summary Judgment and Cross-Motion for Summary Judgment.

7. As matters presently stand the Board has unfortunately granted the “drastic means” of ending this case without full knowledge of the underlying factual and

legal circumstances, and entered an Order on July 25th that ought to be reconsidered and modified to the extent that it be vacated to allow full consideration of the Respondents' objections and replies to the Complainant's Motion for Summary Judgment. Hopefully, the Board will cause that to happen. Then, Complainant's reply to the Respondents' Objections to the Complainant's Motion for Summary Judgment can be filed at such time as the Hearing Office directs, just as she said she would in her Order of July 8, 2013.

WHEREFORE, Respondents again pray that the Board allow the filing of this Reply; that their Motion to Reconsider and Modify the Order of this Board entered on July 25, 2013 be granted; and that Respondents be given leave to file their *Instanter* Motion and their Objections to Complainant's Motion for Summary Judgment and Cross-Motion for Summary Judgment, all on file with the Clerk of the Board.

Respectfully Submitted,
Respondents Ironhustler & Bright

By: \s\ *Thomas J. Immel*,
Their attorney

VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the factual statements set forth in the foregoing pleading are true and correct.

/s/ *Thomas J. Immel*

Thomas J. Immel

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PO Box 2418
1307 South Seventh Street
Springfield, Illinois 62705
(217) 544-3403
timmel@feldman-wasser.com

Certificate of Service

The undersigned attorney hereby certifies that a copy of the foregoing Motion to Reconsider and Modify Board Order has been served upon the persons listed below by emailing same to each of them and also placing the same in a sealed envelope, addressed as indicated, with postage fully prepaid and by depositing the same in the United States mail at Springfield, Illinois this 15th day of September, 2013:

Raymond J. Callery
Assistant Attorney General
Environmental Enforcement Bureau
Office of the Illinois Attorney General
500 South Second Street
Springfield, Illinois 62706

Charles M. Rock
Hassellberg Rock Bell & Kuppler, LLP
4600 North Brandywine Dr.
Suite 200
Peoria, IL 61614

Carol Webb, Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
PO Box 19274
Springfield, IL 62794-9274

and that the original of said Motion to Reconsider and Modify Board Order has been filed with the Clerk of the Illinois Pollution Control Board on the same date.

Is *Thomas J. Timmel*