

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

Complainant,)

vs.)

No. PCB No. 04-192
(Enforcement – Land & Water)

SMITHFIELD PROPERTIES, L.L.C.,)
an Illinois Limited Liability company,)
WOOTON CONSTRUCTION, LTD.,)
an Illinois corporation, and CHICAGO)
SUN-TIMES, INC., a Delaware)
corporation)

Respondents.)

NOTICE OF FILING

TO: See attached service list

Please take notice that I have today, February 28, 2011, filed with the Office of the Clerk of the Illinois Pollution Control Board via electronic filing the People's Motion To Strike Respondent's, Wooton Construction, Ltd, Motion To Dismiss Or For Summary Judgment As To Counts I-VI and Count VIII, along with Notice of Filing and Certificate of Service, a copy of which is attached hereto and served upon you.

Respectfully submitted,

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

BY: 
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SERVICE LIST

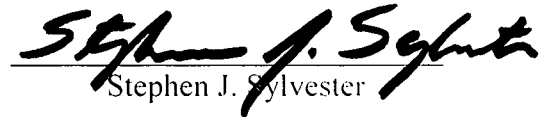
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CERTIFICATE OF SERVICE

I, Stephen J. Sylvester, do hereby certify that I served the People's Motion To Strike Respondent's, Wooton Construction, Ltd, Motion To Dismiss Or For Summary Judgment As To Counts I-VI and Count VIII, on the persons on the service list by depositing the same in the U.S. Mail, postage prepaid, on February 28, 2011 at 100 W. Randolph, Chicago, Illinois.


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PEOPLE OF THE STATE OF ILLINOIS,)	
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Complainant,)	
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vs.)	No. PCB No. 04-192
)	(Enforcement – Land &
SMITHFIELD PROPERTIES, L.L.C., an Illinois)	Water)
limited liability Company, WOOTON)	
CONSTRUCTION, LTD., an Illinois corporation, and)	
CHICAGO SUN-TIMES, INC., a Delaware)	
corporation,)	
)	
Respondents.)	

**PEOPLE'S MOTION TO STRIKE RESPONDENT'S,
WOOTON CONSTRUCTION, LTD, MOTION TO DISMISS OR
FOR SUMMARY JUDGMENT AS TO COUNTS I-VI AND COUNT VIII**

Now comes the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois ("People"), and pursuant to Section 101.500(a) and (d) of the Illinois Pollution Control Board ("Board") Procedural Rules, 35 Ill. Adm. Code 101.500(a) and (d), hereby moves to strike Respondent's, Wooton Construction, Ltd. ("Wooton"), Motion To Dismiss Or For Summary Judgment As To Counts I-VI and Count VIII ("Motion"). In support thereof, Complainant states as follows:

I. INTRODUCTION

1. On February 9, 2011, Wooton filed with the Board its Motion.
2. On February 15, 2011, the People were served a copy of Wooton's Motion via U.S. Mail.
3. Section 101.500(d) of the Board Procedural Rules, 35 Ill. Adm. Code 101.500(d), provides that within 14 days after service of a motion, a party may file a response to the motion.

4. Section 101.300 of the Board Procedural Rules, 35 Ill. Adm. Code 101.300, provides, in pertinent part, as follows:

Computation of Time

- a) Computation of any period of time prescribed in the Act, other applicable law, or these rules will begin with the first calendar day following the day on which the act, event or development occurs and will run until the close of business on the last day, or the next business day if the last day is a Saturday, Sunday or national or State legal holiday.

* * *

- c) Time of Service.... In the case of service by U.S. Mail, service is presumed complete four days after mailing. The presumption can be rebutted by proper proof.

5. The People's Motion to Strike herein has been timely filed, since four days after Wooton filed its Motion was Sunday, February 13, 2011. Fourteen days thereafter is Sunday, February 27, 2011. Since the due date for the People's response to Wooton's Motion fell on a Sunday, pursuant to Section 101.300(a) of the Board Procedural Rules, 35 Ill. Adm. Code 101.300(a), the due date is Monday, February 28, 2011.

II. ARGUMENT

A. **The People's Motion To Strike is Properly Brought Pursuant to the Board Procedural Rules.**

The Board Procedural rules provide that the Board "may entertain any motion the parties wish to file that is permissible under the Act or other applicable law, these rules, or the Illinois Code of Civil Procedure." 35 Ill. Adm. Code 101.500(a). As the Board has previously found, case law from Illinois is replete with instances of the courts entertaining motions to strike filings that may not technically be "pleadings." See *United City Of Yorkville, v. Hamman Farms*, PCB 08-96, 2010 WL 4566091, slip op. at 10 (Nov., 4, 2010), citing *McWilliams v. Dettore*, 387 Ill. App. 3d 833, 841-42, 851-52, 901 N.E.2d 1023, 1030, 1037-38 (1st Dist. 2009) (affirming grant

of motion to strike affidavit to post-trial motion); *see also In re Marriage of Sutherland*, 251 Ill. App. 3d 411, 413, 622N.E.2d 105, 107 (2nd Dist. 1993) ("A motion is an application to the court for a ruling or an order in a pending case. *** A pleading, in contrast, consists of a party's formal allegations of his claims or defenses.").

Likewise, the Board has historically entertained, and at times granted, such motions to strike. *United City Of Yorkville, v. Hamman Farms*, PCB 08-96, 2010 WL 4566091, slip op. at 10 (Nov., 4, 2010) (granting motion to strike untimely and overbroad motion to dismiss), citing *MDI Ltd. P'Ship # 42 v. Regional Board of Trustees*, PCB 00-181, slip op. at 2-3, 7 (May 2, 2002) (granting motion to strike affidavit to motion for summary judgment); *People v. Forty-Eight Insulations, Inc.*, PCB 74-480, slip op. at 1 (Jan. 6, 1977) (granting motion to strike untimely motion for stay).

As a result the People's Motion to Strike is properly brought before the Board.

B. Wooton's "Motion to Dismiss" is Untimely and Should be Stricken.

Section 101.506 of the Board Procedural Rules provides as follows:

Motions Attacking the Sufficiency of the Petition, Complaint, or Other Pleading

All motions to strike, dismiss, or challenge the sufficiency of any pleading filed with the Board must be filed within 30 days after the service of the challenged document, unless the Board determines that material prejudice would result.

A review of the procedural history of this case shows that the People filed its complaint in this cause on May 5, 2004. Subsequently on September 28, 2004, Wooton filed its answer to the People's complaint. Consequently, any motion to dismiss the People's complaint at this point is clearly untimely. Accordingly, to the extent that Wooton's Motion seeks to have the Board dismiss Counts I-VI and Count VIII of the People's complaint against Wooton, that portion of Wooton's Motion should be stricken.

C. Wooton's Motion for Summary Judgment is Legally Insufficient and Should be Stricken.

Entry of summary judgment has two requisites: the absence of any issue as to material fact and the unmistakable conclusion of law that the moving party is entitled to the judgment he seeks. *Skipper Marine Electronics, Inc. v. United Parcel Service, Inc.*, 210 Ill.App.3d 231, 235 (1st Dist. 1991).

Wooton's Motion is devoid of any citation to the Board Procedural Rules or any case law to provide a legal basis upon which to grant Wooton's Motion. Therefore to the extent that Wooton's Motion seeks to have the Board grant summary judgment in its favor on Counts I-VI and Count VIII of the People's complaint against Wooton, that portion of Wooton's Motion should be stricken.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order striking and/or denying Respondent's, WOOTON CONSTRUCTION, LTD., Motion To Dismiss Or For Summary Judgment As To Counts I-VI and Count VIII.

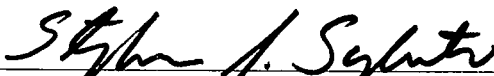
Respectfully submitted,

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