

**BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS**

ESTATE OF GERALD D. SLIGHTOM,	)	
Petitioner,	)	
	)	
v.	)	PCB 11-25
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
Respondent.	)	

**NOTICE**

John Therriault, Acting Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street  
Suite 11-500  
Chicago, IL 60601

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

Patrick Shaw  
Fred C. Prillaman  
Mohan, Alewelt, Prillaman & Adami  
1 North Old Capitol Plaza, Suite 325  
Springfield, IL 62701-1323

PLEASE TAKE NOTICE that I have today, on behalf of the Illinois Environmental Protection Agency, filed with the office of the Clerk of the Pollution Control Board an MOTION TO QUASH SUBPOENA, copies of which are herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,  
Respondent

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Melanie A. Jarvis  
Assistant Counsel  
Division of Legal Counsel  
1021 North Grand Avenue, East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
217/782-5544  
217/782-9143 (TDD)  
Dated: July 19, 2011

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**MOTION TO QUASH SUBPOENA**

**NOW COMES** the Respondent, the Illinois Environmental Protection Agency (“Illinois EPA”), by one of its attorneys, Melanie A. Jarvis, Assistant Counsel and Special Assistant Attorney General, and, pursuant to 35 Ill. Adm. Code 101.500, 101.502, 101.616, and 101.622 hereby respectfully moves the Illinois Pollution Control Board (“Board”) to QUASH Petitioner’s Notice of Deposition. In support of said motion, the Illinois EPA states as follows:

**I. APPLICABLE LAW**

**Section 101.622 Subpoenas and Depositions**

- a) Upon request by any party to a contested proceeding, the Clerk will issue subpoenas for the attendance of witnesses at a hearing or deposition. Subpoena forms are available at the Board's Chicago office. The person requesting the subpoena is responsible for completing the subpoena and serving it upon the witness.
- b) Service of the subpoena on the witness must be completed no later than 10 days before the date of the required appearance. A copy of the subpoena must be filed with the Clerk and served upon the hearing officer within 7 days after service upon the witness. Failure to serve both the Clerk and the hearing officer will render the subpoena null and void. Service and filing must be in accordance with Subpart C of this Part.
- c) Subpoenas may include a command to produce books, papers, documents, or other tangible things designated therein and relevant to the matter under consideration.
- d) **The hearing officer, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance, may quash or modify the subpoena if it is unreasonable or irrelevant.** The hearing officer will rule upon

motions to quash or modify material requested in the subpoena pursuant to subsection (c) of this Section in accordance with the standards articulated in Section 101.614 of this Part. (Emphasis added)

- e) Each witness subpoenaed by a party under this Section is entitled to receive witness fees from that party as provided in Section 4.3 of the Circuit Courts Act [705 ILCS 35/4.3].
- f) Unless the hearing officer orders otherwise, any witness subpoenaed for a deposition may be required to attend only in the county in which he resides or maintains an office address. In accordance with Supreme Court Rule 206(d), all depositions must be limited to 3 hours in length unless the parties and the non-party deponent by stipulation agree to a longer time frame or unless the hearing officer orders otherwise after a showing of good cause. (See Ill. S. Ct. Amended Rule 206(d).)
- g) Failure of any witness to comply with a subpoena will subject the witness to sanctions under this Part, or the judicial enforcement of the subpoena. The Board may, upon proper motion by the party requesting the subpoena, request the Attorney General to pursue judicial enforcement of the subpoena on behalf of the Board.

## **II. ARGUMENT**

On July 8, 2011, the Illinois EPA filed an Objection to the Petitioner's motion to compel and to discovery in general. In the interest of brevity, the Illinois EPA requests that the Board, through its hearing officer, refer to its previously filed Objection to Discovery for the reasoning why it should QUASH Petitioner's Notice of Deposition. In short, discovery is not warranted where the relevant facts are not in dispute. Further, discovery is not warranted when a motion for summary judgment is pending. Finally, the Board should decide the case based exclusively upon the administrative record. A deposition in this case would be irrelevant to the question of law to be decided by the Board where no genuine issue of fact exists.

**III. CONCLUSION**

For the reasons stated herein, the Illinois EPA respectfully requests that the Board, through its hearing officer, QUASH Petitioner's Notice of Deposition.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

Respondent

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Melanie A. Jarvis  
Assistant Counsel  
Special Assistant Attorney General  
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1021 North Grand Avenue, East  
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Dated: July 19, 2011

**CERTIFICATE OF SERVICE**

I, the undersigned attorney at law, hereby certify that on July 19, 2011, I served true and correct copies of a MOTION TO QUASH SUBPOENA, via the Board's COOL system and by placing true and correct copies thereof in properly sealed and addressed envelopes and by depositing said sealed envelopes in a U.S. Mail drop box located within Springfield, Illinois, with sufficient First Class postage affixed thereto, upon the following named persons:

John Therriault, Acting Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street  
Suite 11-500  
Chicago, IL 60601

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Illinois Pollution Control Board  
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