

## John Therriault - Fwd: Six-M Corp.and William Maxwell

From: Carol Webb  
 To: Crowley, Kathleen; Therriault, John  
 Date: 2/27/2012 10:52 AM  
 Subject: Fwd: Six-M Corp.and William Maxwell

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FEB 27 2012

STATE OF ILLINOIS  
 Pollution Control Board

John,  
 Please enter this email into the record for PCB 12-35.

Pct#1



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>>> "Davis, Thomas E." <TDavis@atg.state.il.us> 2/23/2012 9:40 AM >>>

Good morning. The call in number for Monday's 10:30 status conference is 214/765-0479 (please note the area code is not 217) and the access code is 8848636.

The Board's order issued February 12<sup>th</sup> indicates that the People's Response to Affirmative Defenses filed on December 6<sup>th</sup> has been construed by the Board as a motion to strike. The Response was not intended as a motion to strike nor does it request that the alleged affirmative defense "be stricken as improper." Slip. Op at 2.

As an Assistant Attorney General, I am obligated to raise this issue (through this message) to the hearing officer and the parties. During the status conference, I would like to explore how the Board may address and resolve its mistake. The mistake is not necessarily the Board's *sua sponte* action (i.e. construing the December 6<sup>th</sup> responsive filing as a "motion"). The Board erred by basing its ruling upon a misreading of the filing: "In a December 6, 2011 filing, the People objected to the affirmative defense *and requested that it be stricken as improper.*" Slip. Op at 2. The words "strike" and "stricken" do not appear in the Response. No relief was requested or necessary. However, the onus is on the Board to correct this particular mistake and (more generally) to avoid abrupt departures in its practices.

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