



request that AEG's motion for dismissal be denied, and that AERG "be substituted as the Respondent in this matter." *Id.* at 2.

### **DISCUSSION**

Several circumstances militate in favor of granting the People's motion to substitute AERG for AEG as the respondent in this case. First, the action before the Board is in its procedural infancy. On February 6, 2013, the People served the complaint on counsel for AEG, who the hearing officer has confirmed is also counsel for AERG. On February 7, 2013, the Board accepted the complaint for hearing. On March 6, 2013, the hearing officer conducted the first status conference call of this proceeding.

Second, there is no opposition to the People's motion for substitution. During the March 6, 2013 status conference, counsel for AEG and AERG stated to the hearing officer that no response would be filed to the People's motion. Accordingly, any objection to the granting of the motion is waived. *See* 35 Ill. Adm. Code 101.500(d).

Third, several relevant representations are made in the People's motion: (1) AERG is the operator of the Site; (2) AERG was issued a Violation Notice; and (3) AEG was named in the complaint as the respondent through inadvertence. *Resp./Mot. Sub.* at 1.

Finally, during the March 6, 2013 status conference, the hearing officer extended until May 6, 2013, the 60-day period for filing an answer to the complaint. Accordingly, the full 60-day period for filing an answer, required by the Board's procedural rules, would be provided even if AEG is replaced by AERG. *See* 35 Ill. Adm. Code 103.204(d). The May 6, 2013 deadline set by the hearing officer would also be consistent with the procedural rules should the Board rule upon AEG's dismissal motion today. Under the rules, the timely filing of a dismissal motion automatically stays the 60-day period for filing an answer to the complaint until the dismissal motion is ruled upon by the Board. *See* 35 Ill. Adm. Code 103.204(e). The first business day following 60th day after the date of this Board order is May 6, 2013. *See* 35 Ill. Adm. Code 101.300(a).

Under these circumstances, the Board finds that granting the People's motion to substitute AERG for AEG as the respondent in this case would result in no undue delay or material prejudice. The Board grants the People's motion for substitution. Accordingly, AERG is the respondent and AEG is not a party to the enforcement action. This record, however, does not establish that AEG should be dismissed "with prejudice." *Mot. Dism.* at 2. AEG's motion for dismissal of this matter as to AEG is otherwise moot based upon the Board's grant of the People's motion to substitute. The Board therefore denies AEG's motion to dismiss. The caption of this order has been amended to reflect AERG as the respondent.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 7, 2013, by a vote of 4-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board