

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

<b>SIERRA CLUB, PRAIRIE RIVERS</b>	)	
<b>NETWORK, and NATIONAL</b>	)	
<b>ASSOCIATION FOR THE</b>	)	
<b>ADVANCEMENT OF COLORED</b>	)	
<b>PEOPLE,</b>	)	
	)	
<b>Complainants,</b>	)	<b>PCB 18-11</b>
	)	<b>(Citizens Enforcement -</b>
<b>v.</b>	)	<b>Water)</b>
	)	
<b>CITY WATER, LIGHT and POWER,</b>	)	
	)	
<b>Respondent.</b>	)	

**NOTICE OF FILING**

To: Don Brown, Clerk  
Illinois Pollution Control Board  
100 West Randolph  
Suite 11-500  
Chicago, IL 60601

And Attached Service List

Please take note that on December 15, 2017, I filed electronically with the Office of the Clerk of the Illinois Pollution Control Board the attached Complainants' Opposition to Respondent's Motion to File a Reply, a copy of which is attached and served upon you.

Respectfully submitted,

/s/ Gregory E. Wannier  
Gregory E. Wannier  
Staff Attorney, Sierra Club 2101 Webster St.  
Suite 1300  
Oakland, CA 94612  
greg.wannier@sierraclub.org  
(415) 977-5646

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

<b>SIERRA CLUB, PRAIRIE RIVERS</b>	)	
<b>NETWORK, and NATIONAL</b>	)	
<b>ASSOCIATION FOR THE</b>	)	
<b>ADVANCEMENT OF COLORED</b>	)	
<b>PEOPLE,</b>	)	
	)	
<b>Complainants,</b>	)	<b>PCB 18-11</b>
	)	<b>(Citizens Enforcement -</b>
<b>v.</b>	)	<b>Water)</b>
	)	
<b>CITY WATER, LIGHT and POWER,</b>	)	
	)	
<b>Respondent.</b>	)	

**COMPLAINANTS' OPPOSITION TO RESPONDENT'S  
MOTION TO FILE A REPLY**

1. Complainants Sierra Club, Prairie Rivers Network, and National Association for the Advancement of Colored People (Complainants) oppose Respondent City Water, Light and Power's (CWLP's) motion to file a reply. CWLP has failed to meet the standard set by the Board in Section 101.500(e) that it would be materially prejudiced by not being allowed to reply to Complainants' response.
2. Section 101.500(e) provides that "[t]he moving person will not have the right to reply, except as permitted by the Board or the hearing officer to prevent material prejudice." 35 Ill. Admin. Code § 101.500(e). Where a party has "adequately stated its position in its motion," the Board will deny a motion for leave to reply. *State v. Peabody Coal Co.*, PCB 99-134 (Apr. 18, 2002), slip op. at 3 (denying motion for leave to reply). When the Board concludes that a reply brief provides no assistance to the Board, it will deny a motion for leave to reply. *Commonwealth Edison Co. v. Illinois Environmental Protection Agency*, PCB 04-215 (Apr. 26, 2007), slip op. at 2; *see also Midwest Generation EME v. Ill.*

*Environ. Protection Agency* (Aug. 18, 2005), PCB 04-216, slip op. at 3. Similarly, the Board will deny a motion to reply “[i]n the interest of administrative efficiency.” *State v. Professional Swine Management*, PCB 10-84 (May 2, 2013), slip op. at 2. Finally, a “bald assertion that material prejudice will result is not sufficient for the Board to grant a motion for leave to file.” *People v. Skokie Valley Asphalt, Co.*, PCB 96-98 (Jun. 5, 2003), slip op. at 2.

3. Applying that standard here, there is no basis for CWLP’s reply. Complainants did not raise any new arguments in the motion response, and so there were no new arguments for CWLP to respond to in its proposed reply. Instead, CWLP’s proposed reply brief rehashes arguments already made in its original motion. CWLP’s desire to respond does not equate to its being materially prejudiced. In turn, a back and forth on the same arguments does not render CWLP’s reply brief a useful tool to the Board in deciding the motion to dismiss. *Commonwealth Edison Co. v. Illinois Environmental Protection Agency*, PCB 04-215 (Apr. 26, 2007), slip op. at 2 (denying a motion to reply when brief offered no assistance to the Board). Unsurprisingly, then, CWLP’s stated justifications in its Motion to Reply constitute little more than unsupported assertions of legal standards. *People v. Skokie Valley Asphalt, Co.*, PCB 96-98 (Jun. 5, 2003), slip op. at 2. CWLP states that Complainants’ response raises “new issues” and “important issues” as to “citizen enforcement complaints” such that “fuller briefing . . . will assist the board”—but it then provides no further detail on how CWLP would be materially prejudiced without a reply. As Justice O’Connor pointed out in a dissenting opinion, an opposing party’s case is always prejudicial—the question is whether the prejudice is unfair. *Old Chief v. United States*, 519 U.S. 172, 193 (1997).
4. A quick review of the three arguments contained in CWLP’s reply confirms that it does not raise new issues warranting a reply. CWLP’s first reply argument does no more than rehash

its misleading claim that the Complainant failed to identify any practices and acts (Resp's Reply Br. at 2-6). Since CWLP already fully stated its position on this argument, there would be no material prejudice if CWLP does not have an opportunity brief this point again. *State v. Peabody Coal Co.*, PCB 99-134 (Apr. 18, 2002), slip op. at 3.

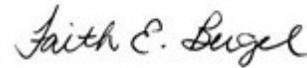
5. CWLP's second argument disputes Complainants' interpretation of case law such as *People v. Prior*. (Resp's Reply Br. at 3-4, citing *People v. Prior*, PCB 97-111, Slip. Op. at 4 (Nov. 20, 1997).) A disagreement as to an interpretation of a case is not a new legal argument and, therefore, does not provide the basis for a claim of material prejudice without an opportunity to reply. And similarly, in pointing out that CWLP didn't cite any case law in its brief to support its motion to dismiss (Resp's Reply Br. at 7-9.), Complainants were not raising a new argument, but were instead identifying a deficiency in CWLP's brief. Citing case law is one of the basic principles of legal briefing and the practice of law. Thus, this is not a novel argument that CWLP has the right to reply to.
6. CWLP's final argument again rehashes an argument it made in the original motion: namely, that Complainants' claims are mutually exclusive. Complainants' argument that we are pleading in the alternative (Resp's Reply Br. at 9-12) was purely a response to CWLP's original argument on this point, and therefore cannot be qualified as a new argument. *State v. Peabody Coal Co.*, PCB 99-134, slip op. at 3 (denying motion for leave to reply).
7. Finally, Complainants object to some of the unfounded and misleading statements in Respondent's reply brief. In particular, Respondent states that "Complainants intend to use this Board proceeding as a fishing expedition to develop evidence that violations of the Act and Board regulations may have occurred . . ." (Resp's Reply Br. ¶3.) Obviously, Complainants take the position that our Complaint is more than adequate—and we have presented documentation that the exceedances of Illinois state groundwater standards

alleged in the Complaint in fact occurred. However, Complainants' major concern with this statement is that Respondent appears to be accusing Complainants, improperly and without basis, of misusing and abusing Board proceedings. CWLP's statements as to Complainants' motivations are improper, prejudicial, and are not based on any personal knowledge Respondent could possibly have as to Complainants' intent. The Board disfavors "prejudicial allegations and conclusions not based on personal knowledge." *Dorothy v. Flex-N-Gate Corp.*, PCB 05-49 (Oct. 20, 2005), slip op. at 6. Thus, CWLP's statements as to Complainants' motivations do not comply with 35 Ill. Admin. Code Section 101.504 and should be stricken; and for this additional reason CWLP's Motion to Reply should be denied.

**CONCLUSION**

For the reasons stated herein, Citizen Groups respectfully request that the Board deny CWLP's Motion to Reply.

Respectfully Submitted,



---

Faith E. Bugel  
1004 Mohawk  
Wilmette, IL 60091  
fbugel@gmail.com  
(312) 282-9119

Gregory E. Wannier  
Staff Attorney, Sierra Club  
2101 Webster St. Suite 1300  
Oakland, CA 94612  
greg.wannier@sierraclub.org  
(415) 977-5646

*Attorneys for Sierra Club, Prairie Rivers  
Network, and National Association for  
the Advancement of Colored People*

Dated: December 15, 2017

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **NOTICE OF FILING** and **COMPLAINANTS' OPPOSITION TO RESPONDENT'S MOTION TO FILE A REPLY** were electronically filed on December 15, 2017 and copies were served on all parties of record listed below by email on December 15, 2017.

/s/ Harry Libarle  
Harry Libarle  
Legal Assistant  
Sierra Club Environmental Law Program  
2101 Webster St., Ste 1300  
Oakland, CA – 94612  
(415) 977-5638 |  
[harry.libarle@sierraclub.org](mailto:harry.libarle@sierraclub.org)

**SERVICE LIST**

PCB 2018-011

Don Brown  
Clerk  
Illinois Pollution Control Board  
[don.brown@illinois.gov](mailto:don.brown@illinois.gov)  
100 West Randolph  
Suite 11-500  
Chicago, IL 60601

Carol Webb  
Hearing Officer  
Illinois Pollution Control Board  
[carol.webb@illinois.gov](mailto:carol.webb@illinois.gov)  
1021 North Grand Avenue East  
P.O. Box 19274  
Springfield, IL – 62794-9274

James K. Zerkle  
Respondent, City of Springfield  
[James.zerkle@springfield.il.us](mailto:James.zerkle@springfield.il.us)  
City of Springfield  
800 East Monroe, 3<sup>rd</sup> Floor  
Springfield, IL - 62701

Deborah Williams  
Regulatory Affairs Director  
Respondent, CWLP  
[Deborah.williams@cwlp.com](mailto:Deborah.williams@cwlp.com)  
800 East Monroe  
Springfield, IL – 62701

Clerk of the City of Springfield  
Municipal Center West, Room 106  
300 S. Seventh Street  
Springfield, IL 62701