BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD

GINA PATTERMANN, Complainant, v. BOUGHTON TRUCKING AND MATERIALS, INC., Respondent.	)	PCB No. 99-187 (Citizens Enforcement - Noise, Air)

NOTICE OF FILING

TO: See Attached Certificate of Service

Please take notice that on August 29, 2003, I filed with the Illinois Pollution Control Board an original and nine copies of this Notice of Filing and the attached Boughton's Response to Plaintiff's Motion for Clarification of Board's Order of August 7, 2003, copies of which are attached and hereby served upon you.

Dated: August 29, 2003

BOUGHTON TRUCKING AND MATERIALS, INC.

By: _____
One of its Attorneys

Mark R. Ter Molen, Esq.
Patricia F. Sharkey, Esq.
Kevin G. Desharnais, Esq.
MAYER, BROWN, ROWE & MAW LLP
190 S. LaSalle Street
Chicago, Illinois 60603
(312) 782-0600

BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD

GINA PATTERMANN,	)	
	)	
Complainant,	)	PCB 99-187
v.	)	(Citizen Enforcement
BOUGHTON TRUCKING AND MATERIALS, INC.,	)	-Noise, Air)
	)	
	)	
Respondent.	)	

BOUGHTON'S RESPONSE TO PLAINTIFF'S MOTION FOR CLARIFICATION OF BOARD'S ORDER OF AUGUST 7, 2003

NOW COMES Respondent, Boughton Trucking and Material, Inc. ("Boughton"), by its attorneys, Mayer, Brown, Rowe & Maw LLP, and responds to Plaintiff's Motion for Clarification of Board's Order of August 7, 2003, stating as follows:

1. There is nothing unclear about the Board's August 7, 2003 Order. As a sanction for Pattermann's pattern of abuse, the Board granted Respondent's motion to bar Mr. Zak's testimony. It is true that the Board did not grant Respondent's request that other evidence pertaining to the subject matter of Mr. Zak's testimony be barred. But, nothing in the Board's order suggests that the Board intended its order to over-ride the Hearing Officer's long established discovery deadlines and allow the Plaintiff to reopen discovery or to designate additional "substitute" witnesses, as the Plaintiff suggests. In fact, the Board's order affirmed that the discovery period is closed:

> "The Board will not grant Boughton's motion to bar the testimony of any other witnesses, pleadings, or documents pertaining to the subject matter of Mr. Zak's proposed testimony. *However*, the Board notes that the current discovery schedule set by the parties together with the hearing officer ordered all depositions completed by May 2, 2003, and all dispositive motions filed on or before May 30, 2003." [emphasis added] [p. 4]

2. Plaintiff's self-serving reading of the Board's order is a poorly disguised effort to reopen the long closed discovery period and to, thereby, eviscerate the sanction imposed by the Board in its August 7, 2003 Order. Nothing in the Board's order implies that Plaintiff is to be allowed to designate a new, "substitute" witness. This reading is not warranted by the language used by the Board, and it would render the Board's sanction meaningless. What would be the *sanction* in barring an expert witness if the Plaintiff were allowed to turn around and hire a new expert to testify to the same thing? In essence, Plaintiff is trying to reverse the Board's sanction.

3. Plaintiff's latest set of attorneys appeared in this matter over two and a half months ago. Yet either they still haven't read the record *or they have read the record and have decided they would like to change it.* Either way, Plaintiff's new attorneys must take the case as they find it. Plaintiffs who file enforcement cases have a duty to take discovery deadlines seriously. In this case, Plaintiff had years to identify witnesses. The Plaintiff's witnesses are now limited to those disclosed during the long discovery period, including the one additional witness allowed by the Hearing Officer's Order dated April 2, 2003 who has also already been identified. All of these witnesses have already been deposed and the record is closed. While members of the public may make statements at any hearing that may occur, they are not party witnesses.

4. Plaintiff implies that reopening discovery would somehow benefit Respondent. [Motion, par. 5.] This belies a serious misunderstanding of the current posture of this case. Contrary to Plaintiff's suggestion, witnesses were deposed during the established discovery period. The one additional witness allowed by the Hearing Officer after the Plaintiff filed her *disallowed 100 person witness list* was Donald Boudreau, and he has already been identified and deposed. The Hearing Officer Order of April 2, 2003 states:

> "By waiting over a year and a half to disclose 97 additional witnesses, the hearing officer found that complainant's disclosure was not reasonable or seasonable. The hearing officer also found that the subject of their testimony was vague... The hearing officer, however, allowed complainant to select one witness from the disclosure list to testify as complainant's witness at the hearing. Complainant represented that she intended to call Donald Boudreau as her additional witness. To that end, respondent's motion was granted in part and denied in part."

As a result of that ruling, Plaintiff was limited to the four previously disclosed witnesses (including Mr. Zak) and one new witness, Mr. Boudreau. Respondent quickly responded to that order and took Mr. Boudreau's deposition within the established discovery period – as Plaintiff well knows.

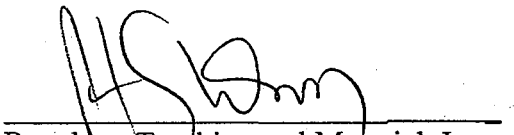
5. Plaintiff's feigned concern that Respondent be allowed to depose additional witnesses is really nothing more than an effort to reopen discovery to allow Plaintiff to rescue its unsupported allegations by fishing for new witnesses more than four years after Plaintiff filed her complaint and four months after the close of discovery. To do this under the guise of seeking clarification of an order which found that Plaintiff has already repeatedly abused the discovery process adds insult to the injury already incurred by this respondent.

6. As stated in the Motion for Sanctions, Respondent has already been seriously prejudiced by the on-going pattern of negligence and harassing litigation tactics employed by Plaintiff in this case. The Board's August 7, 2003 order confirmed this abuse and sanctioned it. Plaintiff should not now be allowed to abuse the discovery process further by using the Board's sanction order to gain additional advantage and delay.

7. This case is ready to proceed to dispositive motions and any further delay is unwarranted.

WHEREFORE, Respondent requests that the Board make it clear that its August 7, 2003 order did not reopen the discovery period, that no new witnesses may be named at this late date, and that this case should proceed to dispositive motions without further delay.

Respectfully submitted,



Boughton Trucking and Material, Inc.
By One of Its Attorneys

Patricia F. Sharkey
Mayer, Brown, Rowe & Maw LLP
190 South LaSalle Street
Chicago, IL 60603
312-782-0600
Attorney Registration No. 6181113

CERTIFICATE OF SERVICE

Patricia F. Sharkey, an attorney, hereby certifies that a copy of the attached Notice of Filing and Boughton's Response to Plaintiff's Motion for Clarification of Board's Order of August 7, 2003 was served on the persons listed below by First Class U.S. Mail, proper postage prepaid, or by Personal Delivery, as indicated below on August 29, 2003.

Bradley Halloran
Illinois Pollution Control Board
100 West Randolph Street
Chicago, IL 60601
(Messenger)

Gina Pattermann
4439 Esquire Circle
Naperville, IL 60564
(U.S. Mail)

Roger D. Rickmon
Tracy, Johnson, Bertani & Wilson
116 North Chicago Street
Sixth Floor, Two Rialto Square
Joliet, IL 60432
(U.S. Mail)

Michael S. Blazer
Matthew E. Cohn
The Jeff Diver Group, LLC
1749 S. Naperville Road, Suite #102
Wheaton, IL 60187
(U.S. Mail)

Patricia F. Sharkey

Patricia F. Sharkey
Attorney for Respondents
Mayer, Brown, Rowe & Maw LLP
190 South LaSalle Street
Chicago, Illinois 60603
312-782-0600