

ILLINOIS POLLUTION CONTROL BOARD
March 8, 2016

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STATE OF ILLINOIS
Pollution Control Board

SUSAN M. BRUCE,)
)
Complainant,)
)
v.) PCB 15-139
) (Citizens Enforcement - Water)
HIGHLAND HILLS SANITARY DISTRICT,)
)
Respondent.)
)

HEARING OFFICER ORDER

On December 22, 2015, I issued an order directing the parties pursuant to an agreed discovery schedule that all non-expert written discovery be served on or before February 15, 2016. On February 22, 2016, the law firm of Huck Bouma PC (Huck Bouma) representing complainant filed a motion to withdraw and to extend discovery deadlines. Also on February 22, 2016, respondent filed a motion to quash service of complainant's non-expert written discovery (Mot. to Quash). Finally, and on February 22, 2016, attorney Lawrence Stein of the law firm of Aronberg Goldgen Davis & Garmisa (Aronberg) filed a supplemental appearance for complainant. On February 26, 2016, I issued an order granting the motion to withdraw. On February 29, 2016, the complainant filed her objection to motion to quash (Object to Quash). Also on February 29, 2016, the complainant filed a motion for an extension of time to serve her non-expert written discovery (Mot. for Ext.). On March 2, 2016, the respondent filed its reply in support of motion to quash service of complainant's non-expert written discovery (Reply).

This order briefly summarizes each filing and then provides my ruling.

Huck Bouma PC's Motion To Withdraw And To Extend Discovery Deadlines

Summary of Motion

Huck Bouma moved to withdraw its representation of the complainant and requested that complainant be given adequate time, or thirty days, to respond to discovery with the assistance of counsel. It is noted that Lawrence Stein from Huck Bouma was the attorney of record at the time the initial complaint was filed. Mr. Stein has since left Huck Bouma and is now with Aronberg.

Respondent's Motion To Quash Service Of Complainant's Non-Expert Written Discovery

Summary of Motion

The respondent recites a litany of reasons as to why its motion should be granted. The respondent states that it received complainant's written discovery *via* electronic service at 9:47

p.m. on February 16, 2016. The respondent states that it has not consented to electronic service pursuant to the Board's procedural rules, and even if it had, the service was still late. Mot. to Quash at 1-2. Next the respondent argues that "even assuming that the documents were transmitted by e-mail on February 15, 2016 [as reflected by the accompanying certificate of service], service was still late" because February 15, 2016 was a holiday so it was not deemed served until the next business day which is February 16, 2016. *Id.*

Summary of Response

In pertinent part, complainant's counsel, Lawrence Stein, admits that he did not electronically serve respondent the written discovery until "February 16, 2016 at around 9:47 p.m. and that the certificate of service indicating February 15, 2016 was a clerical error." Object to Quash at 1. Next, Mr. Stein states that the parties have been "emailing documents to each other since respondent's counsel became involved with this matter." *Id.* Nevertheless, Mr. Stein states that respondent received the written discovery on February 17, 2016, *via* U.S. Mail. *Id.* at 1-2. In Mr. Stein's motion for an extension of time to serve non-expert discovery, he states that "counsel was laboring under the incorrect assumption that emailing those documents on the day they were due, but after 5 pm, would be timely." Mot. for Ext. at 1-2.

Summary of Reply

In respondent's reply, it agrees with the complainant that the parties have been electronically communicating with each other, but argues at length regarding the types of communications by e-mail and that "[a]t no time has the District ever attempted to *serve* [emphasis in original] Bruce's counsel by e-mail with any pleading or motion paper (motion, response or reply) filed with the Board." Reply at 1-2. Finally, respondent argues that "the attempted e-mail service at issue was made by a law firm (*i.e.*, Aronberg) that had not filed an appearance for Bruce and therefore did not represent her at the time." *Id.* at 3.

Discussion and Ruling

Regardless of the respondent's arguments that it had not consented to e-mail service and even if it had, the service of the written non-expert discovery was five hours and seventeen minutes late, the respondent does not dispute Mr. Stein's contention that it received the written discovery *via* United States Mail on February 17, 2016. One day past the service deadline.

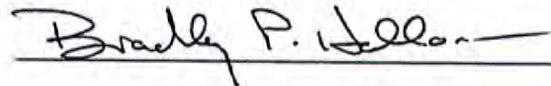
"The Board's hearing officers have wide discretion in controlling discovery." Olive Streit and Lisa Streit v. Oberweis Dairy, Inc., et. al, PCB 95-122, slip op. at 4 (February 1, 1996). Here, complainant was at the most one day late with her service—by U.S. mail—of non-expert written discovery—a minimal and inconsequential delay. Also, the fact that Mr. Stein was in the middle of changing law firms and was unclear about the Board's rules regarding service confusion over timely service weigh against granting respondent's motion to quash. Nor does respondent assert that it was prejudiced by the delay in receiving complainant's non-expert discovery requests. There is also pending complainant's motion for an extension of time to serve non-expert written discovery. Under these circumstances, I find that good cause exists to extend

the deadline to serve non-expert discovery *nunc pro tunc* to February 17, 2016; this ruling renders timely complainant's mailing of the requests to respondent.

While I am persuaded in this instance that the delay in complying with my order setting discovery deadlines was excusable, that finding does not license future non-compliance. Counsel is expected to comply with the deadlines set in my orders as well as the Board's procedural rules (35 Ill. Adm. 101 *et seq.*). Those rules may be accessed online at <http://www.ipcb.state.il.us/SLR/BoardProceduralandAdministrativeRules.asp>.

Respondent's motion to quash is denied. Complainant's motion for an extension of time to serve non-expert written discovery is granted. Further discussion of the remaining discovery deadlines will be entertained at the telephonic status conference scheduled for March 9, 2016, at 10:00 a.m.

IT IS SO ORDERED.



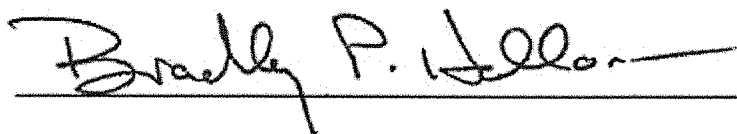
Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 W. Randolph Street
Chicago, Illinois 60601
312.814.8917
Brad.Halloran@illinois.gov

CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were mailed, first class, on March 8, 2016, to each of the persons on the service list below.

It is hereby certified that a true copy of the foregoing order was hand delivered to the following on March 8, 2016:

John T. Therriault
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Ste. 11-500
Chicago, Illinois 60601

A handwritten signature in black ink that reads "Bradley P. Halloran". The signature is written in a cursive style and is positioned above a solid horizontal line.

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601
312.814.8917

SERVICE LIST

PCB 2015-139
Joseph R. Podlewski, Jr.
Podlewski & Hanson, P.C.
4721 Franklin Avenue
Suite 1500
Western Springs, IL 60558-1720

PCB 2015-139
Heidi E. Hanson
Podlewski & Hanson, P.C.
4721 Franklin Avenue
Suite 1500
Western Springs, IL 60558-1720

PCB 2015-139
Highland Hills Sanitary District
566 East 13th Place
Lombard, IL 60148

PCB 2015-139
Lawrence A. Stein
Aronberg Goldgehn Davis &
Garmisa
One IBM Plaza, Suite 1700
Chicago, IL 60611