

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SUSAN M. BRUCE,	)	
Complainant,	)	PCB # 2015-139
v.	)	(Citizens - Water Enforcement)
HIGHLAND HILLS SANITARY	)	
DISTRICT,	)	
Respondent.	)	

NOTICE OF FILING

To: Edward J. Sedlacek  
Huck Bouma PC  
1755 South Naperville Road  
Wheaton, IL 60189


Lawrence A. Stein  
Aronberg Goldgehn Davis & Garmisa  
330 N. Wabash Avenue  
Suite 1700  
Chicago, Illinois 60611

PLEASE TAKE NOTICE that I have today filed with the Pollution Control Board the following document:

HIGHLAND HILLS SANITARY DISTRICT'S MOTION TO QUASH SERVICE OF  
COMPLAINANT'S NON-EXPERT WRITTEN DISCOVERY

a copy of which is hereby served upon you.

Respectfully submitted,

  
Heidi E. Hanson

Dated: February 22, 2016

Joseph R. Podlewski Jr.  
Heidi E. Hanson  
Podlewski & Hanson P.C.  
4721 Franklin Ave, Suite 1500  
Western Springs, IL 60558-1720  
(708) 784-0624

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SUSAN M. BRUCE,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB # 2015-139
	)	(Citizens - Water Enforcement)
HIGHLAND HILLS SANITARY	)	
DISTRICT,	)	
	)	
Respondent.	)	

**HIGHLAND HILLS SANITARY DISTRICT'S MOTION TO QUASH SERVICE OF  
COMPLAINANT'S NON-EXPERT WRITTEN DISCOVERY**

Respondent HIGHLAND HILLS SANITARY DISTRICT ("District"), by and through its attorneys, Podlewski & Hanson P.C., hereby moves the Hearing Officer to quash service of the non-expert written discovery of Complainant SUSAN M. BRUCE ("Bruce"). In support of this motion, the District states as follows:

1. Pursuant to the joint agreement of the parties memorialized in the hearing officer's December 22, 2015 order, non-expert written discovery was to be served in this matter on or before February 15, 2016.
2. At 9:47 p.m. on Tuesday, February 16, 2015, counsel for the District received an e-mail from Bruce's counsel. (A true and correct printed copy of the e-mail received by the District's counsel is attached hereto as Exhibit A.) Attached to this e-mail were Bruce's first set of interrogatories and document production requests (Exhibits B and C). The certificates of service accompanying Bruce's written discovery provide that service was made by e-mail on February 15, 2016.
3. Even if the certificates of service are accurate—something that is difficult to accept because it is very unlikely that an e-mail transmission would take over 21 hours—the service of

Bruce's non-expert written discovery not only violated the hearing officer order that it be served on or before February 15, 2016, but also was in contravention of various Illinois Pollution Control Board Rules governing e-mail service.

a. Under the Illinois Pollution Control Board's Procedural Rules, service by e-mail is only permissible "if the recipient has consented to e-mail service in the proceeding and has not revoked that consent." 35 Ill. Adm. Code 101.1060(a). Pursuant to Procedural Rule 101.1070(a), consent to service by e-mail can only be given by filing a completed "Consent to Receipt of E-Mail Service" form with the Clerk of the Board. No such consent form has been filed by the District or its counsel in this matter. Consequently, the District and its counsel have not consented to e-mail service.

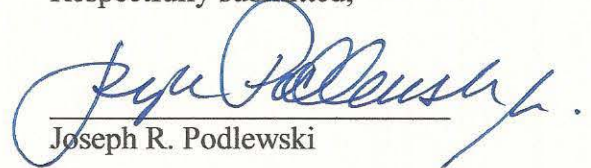
b. Even if District and its counsel had so consented, in order for e-mail service to be effective, documentation of e-mail service is to be filed with the Clerk of the Illinois Pollution Control Board. 35 Ill. Adm. Code 101.1060(e). Bruce has failed to comply with the requirements on Procedural Rule 101.1060(e)(1), (2) and (4) by not filing documentation with the Clerk of the Board identifying the persons authorizing e-mail service, the number of pages in the e-mail transmission and the date and time of the e-mail transmission.

c. Finally, even assuming that the documents were transmitted by e-mail on February 15, 2016, service was still late. February 15, 2016 was a federal and state holiday (Presidents' Day). Under the Illinois Pollution Control Board's Procedural Rules, any document sent by e-mail on a federal or state holiday is not deemed served until the next business day. 35 Ill. Adm. Code 101.300(c)(3). Accordingly, even if the documents were otherwise properly served, they were not deemed served until the day after they were to be served under a hearing officer order that was entered nearly seven weeks earlier pursuant to the parties' agreement.

4. Because Bruce's written discovery was not served in accordance with the hearing officer's December 22, 2015 order and the applicable Board Procedural Rules governing e-mail service, that service is defective and is to be considered a nullity.

WHEREFORE, the District respectfully requests that the hearing officer quash the attempted service of Bruce's non-expert written discovery on the grounds that it was not served in accordance with the hearing officer's December 22, 2015 order and applicable Board Procedural Rules governing e-mail service. The District further requests that the hearing officer find that the attempted service is a nullity and that no non-expert written discovery has been served on the District in this matter.

Respectfully submitted,



Joseph R. Podlewski

Joseph R. Podlewski  
Heidi Hanson  
Podlewski & Hanson P.C.  
4721 Franklin Ave., Suite 1500  
Western Springs, Illinois 60558  
(708) 784-0624

Dated: February 22, 2016

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## Bruce v. Highland Hills Sanitary District

From: **Lawrence A. Stein** (LStein@agdglaw.com)

Sent: Tue 2/16/16 9:47 PM

To: **Joe Podlewski** (jpodlewski@live.com); **Heidi Hanson** (heh70@hotmail.com)

2 attachments

Bruce Document Request.pdf (579.4 KB) , Bruce Interrogatories.pdf (594.6 KB)

Counsel:

Attached please find the complainant's first set of written discovery requests.

Larry Stein

**Lawrence A. Stein**

[lstein@agdglaw.com](mailto:lstein@agdglaw.com)



Aronberg Goldgehn / 330 N. Wabash Ave. / Suite 1700 / Chicago, IL 60611-3586

Direct: (312) 755-3133 / Fax: (312) 222-6399 / [www.agdglaw.com](http://www.agdglaw.com)

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This electronic message is from a law firm. It may contain confidential or privileged information. If you received this transmission in error, please reply to the sender to advise of the error and delete this transmission and any attachments.

EXHIBIT A

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SUSAN M. BRUCE	)	
	)	
Complainant	)	
	)	
v.	)	PCB # 2015-139
	)	(Citizens – Water Enforcement)
HIGHLAND HILLS SANITARY DISTRICT	)	
	)	
Respondent.	)	

COMPLAINANT'S FIRST SET OF INTERROGATORIES

Complainant, SUSAN M. BRUCE, by her attorneys, propounds these interrogatories on respondent, HIGHLAND HILLS SANITARY DISTRICT, to be answered in writing and under oath within 28 days:

1. State the name, address and telephone number of all persons who have information, whether direct or indirect, relating to the facts, circumstances or other matters alleged in the Amended Complaint.
2. Please describe, in reasonably particular detail, the operation of the respondent, including a description of its facilities within its boundaries for the transportation of effluent, from the points where it enters the respondent's facilities, and its transportation whether by gravity, or otherwise, to its disposal point, whether that point is a treatment facility or otherwise.
3. For each instance since January 1, 2001 where a complaint has been made of a malfunction of the sanitary sewer lines within the boundaries of the district, please state:
  - a. The date of the complaint;
  - b. The name and address of the person making the complaint;
  - c. The nature of the complaint;

EXHIBIT B

## Electronic Filing - Received, Clerk's Office : 02/22/2016

- d. Any action by the respondent or determination of merits of the complaint or the cause thereof.
4. For each instance since January 1, 2001 where a complaint has been made that the sanitary sewer lines of the district might be being subject to the infiltration of rain or storm water, or other liquids other than effluent, please state:
  - a. The date of the complaint;
  - b. The name and address of the person making the complaint;
  - c. The nature of the complaint;
  - d. Any action by the respondent or determination of merits of the complaint or the cause thereof.
5. For any inspections, investigations, or reports on the operation of the district since January 1, 2001, including, without limitation, inspections, investigations, or reports concerning malfunctions of the respondent's sanitary sewer lines or complaints that the sanitary sewer lines of the district might be being subject to the infiltration of rain or storm water, or other liquids other than effluent, please state:
  - a. The names and addresses of all persons or others involved in the inspections, investigations, or reports
  - b. The nature of the inspections, investigations, or reports;
  - c. The dates of the inspections, investigations, or reports;
  - d. The conclusions of the inspections, investigations, or reports; and
  - e. The names and address of any person or entity that may have copies of documents related to the inspections, investigations, or reports, including the reports themselves.

6. For any communications since January 1, 2001 between the respondent, and any other governmental unit, including without limitation, the village of Lombard, the County of Du Page, the state of Illinois, or any part of the government of the United States of America, concerning the operations of the respondent since January 1, 2001, please state:
  - a. The date of the communication;
  - b. The nature of the communication;
  - c. The content of the communication; and
  - d. The reasons for the communication.
7. For each allegation since January 1, 2001 that the respondent was not adequately performing its functions, please state:
  - a. The date of the allegation;
  - b. The nature of the allegation;
  - c. The name and address of the person or entity making the allegation; and
  - d. Any resolution of the allegation, whether by the respondent or anyone else.
8. Please state furnish the names and addresses of witnesses who will testify at trial, including:
  - a. Each person giving only fact or lay opinion testimony, stating the subjects on which the witness will testify;
  - b. Each person giving expert testimony who is not the party, the party's current employee, or the party's retained expert, stating the subjects on which the witness will testify and the opinions the party expects to elicit; and
  - c. Each person giving expert testimony who is the party, the party's current employee, or the party's retained expert, stating:



- i. The subject matter on which the witness will testify;
- ii. The conclusions and opinions of the witness and the bases for them;
- iii. The qualifications of the witness; and
- iv. Any reports prepared by the witness about the case.

Respectfully submitted,

ARONBERG GOLDGEHN  
DAVIS & GARMISA, LLC

/s/ Lawrence A. Stein

Lawrence A. Stein

Lawrence A. Stein  
**ARONBERG GOLDGEHN DAVIS & GARMISA, LLC**  
330 North Wabash Avenue, Suite 1700  
Chicago, Illinois 60611  
(312) 755-3133  
[lstein@agdglaw.com](mailto:lstein@agdglaw.com)

CERTIFICATE OF SERVICE

I, LAWRENCE A. STEIN, certify under penalty of perjury, on this fifteenth day of February 2016, as follows:

1. I served this *Complainant's First Set of Interrogatories* by transmitting it to counsel for the respondent at counsel's regular email address.
2. I transmitted this *Complainant's First Set of Interrogatories* by email on February 15, 2016.

/s/ Lawrence A. Stein

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SUSAN M. BRUCE	)	
	)	
Complainant	)	
	)	
v.	)	PCB # 2015-139
	)	(Citizens – Water Enforcement)
HIGHLAND HILLS SANITARY DISTRICT	)	
	)	
Respondent.	)	

COMPLAINANT'S FIRST SET OF REQUEST FOR PRODUCTION

Complainant, SUSAN M. BRUCE, by her attorneys, requests that espondent, HIGHLAND HILLS SANITARY DISTRICT, produce the following within 28 days:

1. The statements of any witnesses.
2. All documents describing its operation since January 1, 2001.
3. All documents regarding any complaints about its operation since January 1, 2001
4. All documents since January 1, 2001 concerning inspections, investigations, or reports on the operation of the respondent, including, without limitation, inspections, investigations, or reports concerning malfunctions of the respondent's sanitary sewer lines or complaints that the sanitary sewer lines of the district might be being subject to the infiltration of rain or storm water, or other liquids other than effluent, please state:
5. All communications since January 1, 2001 between the respondent, and any other governmental unit, including without limitation, the village of Lombard, the County of Du Page, the state of Illinois, or any part of the government of the United States of America, concerning the operations of the respondent
6. All documents concerning any allegation since January 1, 2001 that the respondent was not adequately performing its functions.
7. All the financial report of the respondent since January 1, 2001.

EXHIBIT C

8. All documents the respondent may offer at any hearing in this matter.
9. All documents that any witness for the respondent has reviewed, will review, or participated in the preparation of.
10. All documents the respondent has concerning the complainant or her property in the respondent's district.
11. An affidavit that the respondent's compliance with this request is complete.

Respectfully submitted,

ARONBERG GOLDGEHN  
DAVIS & GARMISA, LLC

/s/ Lawrence A. Stein

Lawrence A. Stein

Lawrence A. Stein  
**ARONBERG GOLDGEHN DAVIS & GARMISA, LLC**  
330 North Wabash Avenue, Suite 1700  
Chicago, Illinois 60611  
(312) 755-3133  
[lstein@agdglaw.com](mailto:lstein@agdglaw.com)

CERTIFICATE OF SERVICE

I, LAWRENCE A. STEIN, certify under penalty of perjury, on this fifteenth day of February 2016, as follows:

1. I served this *Complainant's First Request for Production of Documents* by transmitting it to counsel for the respondent at counsel's regular email address.
2. I transmitted this *Complainant's First Request for Production of Documents* by email on February 15, 2016.

/s/ Lawrence A. Stein

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CERTIFICATE OF SERVICE

I, the undersigned attorney, certify that I have served on the date of February 22, 2016 the attached:

HIGHLAND HILLS SANITARY DISTRICT'S MOTION TO QUASH SERVICE OF  
COMPLAINANT'S NON-EXPERT WRITTEN DISCOVERY

Upon the following persons, by electronic filing before 4:30 this day:

Clerk's Office On-Line  
Illinois Pollution Control Board  
100 West Randolph Street  
James R. Thompson Center, Suite 11-500  
Chicago, Illinois 60601-3218

And by depositing same in the U. S. Postal Service mailbox at Western Springs, Illinois before 4:30 this day, February 22, 2016 with proper postage prepaid, upon the following persons:


One copy to:

Edward J. Sedlacek  
Huck Bouma PC  
1755 South Naperville Road  
Wheaton, IL 60189

Lawrence A. Stein  
Aronberg Goldgehn Davis & Garmisa  
330 N. Wabash Avenue  
Suite 1700  
Chicago, Illinois 60611

Bradley Halloran, Hearing Officer  
Illinois Pollution Control Board  
100 West Randolph Street  
James R. Thompson Center, Suite 11-500  
Chicago, Illinois 60601-3218

Dated: February 22, 2016

  
Heidi E. Hanson

Joseph R. Podlewski Jr.  
Heidi E. Hanson  
Podlewski & Hanson P.C.  
4721 Franklin Ave, Suite 1500  
Western Springs, IL 60558-1720  
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