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: 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 documents:

RESPONDENT'S MOTION FOR SUMMARY JUDGMENT and RESPONDENT'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Copies of which are hereby served upon you.

Respectfully submitted,

Heidi E. Hanson

Dated: April 27, 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,	)	PCB # 2015-139
v.	)	(Citizens - Water Enforcement)
HIGHLAND HILLS SANITARY DISTRICT,	)	
	)	
	)	
Respondent.	)	

RESPONDENT'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON COMPLAINANT'S ALLEGATIONS OF VIOLATIONS OF 35 Ill. ADM. CODE 306.102(a) AND THE BOARD ORDER ENTERED IN *RAMON TRAVIESO v. HIGHLAND HILLS SANITARY DISTRICT*, PCB 79-72 (NOVEMER 1, 1979)

Respondent, HIGHLAND HILLS SANITARY DISTRICT ("District"), by and through its attorneys PODLEWSKI & HANSON P.C., respectfully moves, pursuant to Section 101.516 of the Illinois Pollution Control Board's Procedural Rules (35 Ill. Adm. Code 101.516) that the Illinois Pollution Control Board ("Board") grant summary judgment in its favor and against Complainant SUSAN M. BRUCE ("Bruce") on the following violations alleged in the Complainant's Amended Formal Complaint:

1. That the District has violated Section 306.102(a) of the Board 's Water Pollution Control Regulations (35 Ill. Adm. Code 306.102(a)); and

2. That the District has violated the Board Order entered in *Ramon Travieso v. Highland Hills Sanitary District*, PCB 79-72 (November 1, 1979) that it cease and desist from violations of Board Rules Chapter 3, Rule 601(a) (since renumbered as 35 Ill Adm. Code 306.102(a)) and Board Rules Chapter 3, Rule 602(b) (since renumbered as 35 Ill Adm. Code 306.303 and 306.304).

The District's Memorandum of Law in support of this motion is attached hereto and made a part hereof.

Respectfully submitted,

Highland Hills Sanitary District
by its attorneys,
Podlewski & Hanson P.C.

Heidi E. Hanson

Dated: April 27, 2016

Joseph R. Podlewski Jr.
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Complainant,	)	PCB # 2015-139
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	)	
HIGHLAND HILLS SANITARY DISTRICT,	)	
	)	
	)	
Respondent.	)	

RESPONDENT'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY JUDGMENT

In July of 2015, Complainant Susan M. Bruce ("Bruce") filed an Amended Formal Complaint against the Respondent Highland Hills Sanitary District ("the District") with the Illinois Pollution Control Board ("Board") alleging, in paragraph 5, the following theories of violation in connection with certain alleged sewer backups occurring in 2010 and 2013 at the Bruce property:

a) that the District had violated 35 Ill Adm. Code 306.102(a) (Malfunctions);

b) that Respondent had violated the Board's order in *Ramon Travieso v Highland Hills Sanitary District*, PCB 79-72 (November 1, 1979) ("*Travieso* Order") that it cease and desist from violations of Board Rules Chapter 3, Rule 601(a) (which has since been renumbered as 35 Ill. Adm. Code 306.102(a));

c) that Respondent had violated the *Travieso* Order that it cease and desist from violations of Board Rules Chapter 3, Rule 602(b) (which has since been renumbered as 35 Ill Adm. Code 306.303 and 306.304); and

d) that Respondent had violated 35 Ill Adm. Code 306.102(b) (Spills).

As set forth more fully below, the District is entitled to summary judgment as to the alleged violations of 35 Ill. Adm. Code 306.102(a) and the *Travieso* Order on the following grounds:

1. The District does not own or operate a treatment works and therefore cannot be in violation of 35 Ill. Adm. Code 306.102(a) or Chapter 3, Rule 601(a);

2. A 2003 amendment to Section 31(d)(1) of the Illinois Environmental Protection Act that authorized, for the first time, citizen suits before the Board for violations of Board orders cannot be applied retroactively so as to provide Bruce with standing to allege a violation of the 1979 *Travieso* Order;

3. The *Travieso* Order, by its very terms, does not apply to the Bruce residence; and

4. The *Travieso* Order is so stale and remote in facts and time that it should not serve as the basis for the Bruce claim of violation against the District.

STANDARD FOR SUMMARY JUDGMENT MOTIONS BEFORE THE BOARD

Section 101.516(b) of the Board's Procedural Rules provides that "[i]f the record, including pleadings, depositions and admissions on file, together with any affidavits, show that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law, the Board will enter summary judgment." 35 Ill. Adm. Code 101.516(b). *People v. Freeman United Coal Mining Company*, PCB 10-61 & 11-02 (November 15, 2012), Slip. Op. at 13. *See also Mulvain v. Village of Durand*, PCB 98-114 (March 18, 1999), Slip. Op. at 1-2.

ARGUMENT

I. Highland Hills Sanitary District Does Not Own or Operate a Treatment Works and Therefore Cannot be in Violation of 35 Ill. Adm. Code 306.102(a) or Chapter 3, Rule 601(a).

Two of Bruce's theories of violation, 35 Ill Adm. Code 306.102(a) and the *Travieso* Order that the District cease and desist from violations of Chapter 3, Rule 601(a)[1], are premised upon the District owning or operating a sewage treatment works. Because the District does not

[1] Chapter 3, Rule 601(a), cited by the Board in the 1979 *Travieso* Order, has since been renumbered and is now 35 Ill. Adm. Code 306.102(a).

own or operate a treatment works and did not own a treatment works during the relevant time period (January 1, 2010 to November 3, 2015), it cannot be in violation of either Section 306.102(a) or Chapter 3, Rule 601(a).

35 Ill. Adm. Code 306.102(a) provides:

> a) Malfunctions: All treatment works and associated facilities shall be so constructed and operated as to minimize violations of applicable standards during such contingencies as flooding, adverse weather, power failure, equipment failure, or maintenance, through such measures as multiple units, holding tanks, duplicate power sources, or such other measures as may be appropriate.

The Board has previously ruled that Rule 601(a) applies only to entities that "own or operate treatment works." In *Burns v. Village of Western Springs*, PCB 80-31 (February 19, 1981), *aff'd on other grounds*, 107 Ill. App. 3d 864, 438 N.E.2d 458 (1982)), the Board stated that a violation of Rule 601(a) "cannot be found against Western Springs because it was not shown to own or operate a treatment works, and, therefore, could not have operated it improperly." *Burns*, PCB 80-31 (February 19, 1981), Slip. Op. at 2. Indeed, in the instant matter the Board ruled that the allegation that the District owns and operates a "treatment works" is an element of a violation of Section 306.102(a) that must be pled in Bruce's complaint. *Bruce v. Highland Hills Sanitary District*, PCB 15-139 (June 4, 2015), Slip Op. at 8.

A. Highland Hills Sanitary District Does Not Own or Operate Sewage Treatment Works.

As stated in the attached Affidavit of Alphonse Sarno Jr., immediate past president of the Highland Hills Sanitary District ("Sarno Affidavit") (Exhibit A)), the District has not owned or operated a treatment works since at least January 1, 2010 and it has not provided treatment to its sewage on any of the dates or time periods alleged in the Amended Formal Complaint. As part of a plan to regionalize wastewater treatment facilities in DuPage County, the Board itself ordered the District to discontinue the operation of its sewage treatment plant and send its

sewage to the Hinsdale Sanitary District treatment plant. *In the Matter of DuPage County Wastewater Regionalization*, R70-17 (August 29, 1974), Slip. Op. at 6-7. The Hinsdale Sanitary District later changed its name to the Flagg Creek Water Reclamation District. The Sarno Affidavit confirms that the Board-ordered treatment by the Flagg Creek Water Reclamation District continues: "[S]ince at least January 1, 2010 the Flagg Creek Water Reclamation District wastewater treatment plant provided treatment for the sewage originated within the Highland Hills Sanitary District boundaries." Sarno Affidavit, ¶4.

B. Sewers Used to Convey Sewage are not "Treatment Works."

In paragraph 8 of the Amended Formal Complaint, Bruce alleges that the District:

> owns and operates a treatment works, as it provides sanitary sewer service to the area under its jurisdiction, which area includes complainant's property, sanitary sewer service it provides through use of: devices and systems owned by a local government unit and used in the storage, treatment, recycling, and reclamation of sewerage or industrial wastes of a liquid nature, including intercepting sewers, outfall sewers, sewage collection systems, pumping power and other equipment, and appurtenances . . . .

Bruce cites 415 ILCS 5/19.1(f) as authority for this allegation. Presumably, however, Bruce meant 415 ILCS 5/19.2(f), a definition of treatment works in the Illinois Environmental Protection Act (the "Act").[2] It appears that Bruce is alleging that the mere fact that the District owns sewers makes it a treatment works by definition.

However, the definition of treatment works in Section 19.2 of the Act is not applicable to 35 Ill Adm. Code 306.102(a) for two reasons:

1. Section 19.2 specifies that the definitions in that section are "as used in this Title," but Section 19.2 is located in Title IV-A of the Act, a title which relates exclusively to federal grants. The authority for Section 306.102(a), however, is located in Title III of the Act

[2] The language following the colon in paragraph 8 of the Amended Formal Complaint is taken directly from 415 ILCS 5/19.2(f).

(Sections 11 – 13.7), which provides for regulation of water pollution. The "authority" statement in the Board's rules for Part 300 (which includes Section 306.102(a)) states that the authority for Part 300 is based on Section 13 of the Act (35 Ill. Adm. Code 301.101). Thus, the definition of treatment works cited by Complainant is taken from a section of the Act which is not applicable to Section 306.102(a).

2. The Board has adopted a definition of treatment works which is specific to its water pollution chapter rules. 35 Ill. Adm. Code 301.200. The Board's definition, 35 Ill. Adm. Code 301.415, clearly exempts sewers from the definition of treatment works[3]:

> "Treatment Works" means individually or collectively those constructions or devices (except sewers, and except constructions or devices used for the pretreatment of wastewater prior to its introduction into publicly owned or regulated treatment works) used for collecting, pumping, treating, or disposing of wastewaters or for the recovery of byproducts from such wastewater.

It is the Board's definition, 35 Ill. Adm. Code 301.415, that controls for purposes of determining compliance with Section 306.102(a) and the Board's definition exempts sewers.

The District is in the same situation here as was the Village of Western Springs in *Burns*--it controls sewers but not the means of treatment. Just as the Board found in *Burns* that the Village of Western Springs was not in violation of Chapter 3, Rule 601(a) because it did not own or operate a treatment works, the Board must find that the District has not violated Section 306.102(a) or Chapter 3, Rule 601(a) because the District does not own or operate a treatment works.

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[3] The Board's definition of treatment works has been substantially unchanged since its adoption in 1972. *In the Matter of Effluent Criteria/Water Quality Standards Revisions/Water Quality Standards Revisions for Intrastate Waters,* Consolidated R 70-8, 71-14 and 71-20 (January 6, 1972) at p. 3-422.

C. There is no Genuine Issue of Material Fact concerning the District's Ownership or Operation of "Treatment Works."

There is, and can be no, reasonable factual dispute on the question of whether the District owns or operates a treatment works. A treatment works is a physical structure. It either exists or it does not. Alphonse Sarno, current Board member and past president of the District, has sworn that the District does not own or operate "any construction or devices (except sewers) used for collecting, pumping, treating, or disposing of wastewater or for recovering byproducts from wastewater." (Sarno Affidavit, ¶5). The District operates a sewage conveyance system only and sewage generated within the District's service area is treated by the Flagg Creek Water Reclamation District's wastewater treatment plant. Complainant's allegation in its Amended Formal Complaint that the District has a treatment works is based on Complainant's mistaken reference to an inapplicable definition of the term and is unsupported by any facts. Bruce's theory that the District owns a treatment works solely by virtue of owing sewers is contradicted by the applicable definition in Section 301.145 of the Board's Water Pollution Control Regulations and by the Board's decision in *Burns*.

In its affirmative defenses to the Amended Formal Complaint, the District stated that it does not own or operate sewage treatment facilities. (Affirmative Defense #1, ¶¶7-13 18, 19; Affirmative Defense #2, ¶¶7-13, 18, 19, 22-24). Bruce generally denied those affirmative defenses in her reply. However, her attempted denials should be given no credence because her reply also generally denied essential elements of her own case. Bruce's vague and improper pleading was a transparent attempt to avoid clarifying her position or admitting any facts and cannot be construed as evidence of a genuine factual disagreement between the parties. Indeed, in striking Mrs. Bruce's reply to the District's affirmative defenses, the Board found that "her

reply did not specifically deny anything at all." *Bruce v. Highland Hills Sanitary District*, PCB 15-139 (March 17, 2016), Slip Op. at 1.

With respect to the District's ownership or operation of a treatment works—a necessary element of a violation of Section 306.102(a) and Chapter 3, Rule 601(a)—the Sarno Affidavit establishes that the District did not own or operate a treatment works during the times alleged in the Amended Formal Complaint.[4] There are no contrary facts. Because there is no genuine issue of material fact with regard to whether the District owns or operates a sewage treatment plant and thus owns a treatment works as defined by Board rule, the District is entitled to summary judgment that it is not, and cannot be, in violation of 35 Ill Adm. Code 306.102 and of the *Travieso* Order that it cease and desist from violations of Chapter 3, Rule 601(a). As the Board held in *Burns,* if the District does not own or operate a treatment works, it cannot operate it "improperly" so as to violate Section 306.102(a) and Chapter 3, Rule 601(a).

II. The 2003 Amendment to Section 31(d)(1) of the Illinois Environmental Protection Act Cannot be Applied Retroactively so as to Provide Bruce with Standing to Allege a Violation of the 1979 *Travieso* Order.

Two of Bruce's four theories of violation rest on her ability to charge the District with violations of the November 1, 1979 *Travieso* Order.

The Illinois Environmental Protection Act Section 31(d)(1) (415 ILCS 5/31(d)(1)) states as follows:

> Any person may file with the Board a complaint…against any person allegedly violating this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, *or any Board order*. (Emphasis added)

[4] Although in *Travieso* the 1979 Board found the District in violation of Chapter 3, Rule 601(a), the issue of whether the District operated a treatment works at that time so as to make that rule applicable to the District's operations was not raised or considered.

However, at the time the *Travieso* Order was entered there was no third party right under Section 31(d)(1) of the Act to pursue a violation of a Board order, nor was there any such right at the time the *Travieso* matter was concluded with the Board's last order in that case of April 16, 1981. At the time of the *Travieso* Order, Section 31(d)(1) provided as follows:

> Any person may file with the Board a complaint...against any person allegedly violating this Act, any rule or regulation thereunder or any permit or term or condition thereof.

The phrase "or any Board order" was added to Section 31(d)(1) by Public Act 93-152, effective July 10, 2003. Accordingly, the statutory authority for a nonparty to bring suit for violation of a Board order between two other parties did not exist until that date, long after the cease and desist order had been entered in *Travieso.*

Because no third party had standing under Section 31(d)(1) of the Act to file a citizen suit alleging violation of a Board order under the law in effect at the time the *Travieso* Order was entered, in order for Bruce—who was not a party to *Travieso*—to pursue her claim that the District has violated the *Travieso* Order, the 2003 amendment to Section 31(d)(1) of the Act would have to be given retroactive effect. There is no justification for giving Public Act 93-152 retroactive effect.

In *People v. J. T. Einoder*, 2015 IL 117193, the Illinois Supreme Court analyzed the retroactivity of an amendment to Section 42(e) of the Illinois Environmental Protection Act (415 ILCS 5/42(e)). Interestingly, the amendment to that section also added the phrase "or any Board order", along with other language, to the Act.

In *Einoder*, the Illinois Supreme Court found that the statutory amendment to Section 42(e) of the Act should not be applied retroactively. Following the same analysis, the statutory

amendment at issue here should not be applied retroactively so as to allow Mrs. Bruce to pursue her *Travieso*-based allegations.

The determination of whether a statutory amendment should be applied retroactively is simple. According to the Illinois Supreme Court, Illinois courts are to follow the approach set forth by the United States Supreme Court in *Landgraf v. USI Film Products*, 511 U.S. 244 (1994). The first step of that approach is to determine whether the "legislature has clearly indicated the temporal reach of the amended statute." *Einoder*, ¶ 29.

There is nothing in the words "or any Board order" that clearly indicates that it is to be applied retroactively. The Illinois Supreme Court viewed those same words when considering the amendment to Section 42(e) and did not see in them any indication of temporal reach.

The Illinois Supreme Court also observed that in Illinois it is seldom necessary to look beyond the first step of *Landgraf* because Illinois has a statutory presumption in favor of prospectivity:

> Illinois courts will rarely, if ever, need to go beyond step one of the *Landgraf* analysis. This is because an amendatory act which does not, itself, contain a clear indication of legislative intent regarding its temporal reach, will be presumed to have been framed in view of the provisions of section 4 of our Statute on Statutes (5 ILCS 70/4 (West 2000)).
>
> *Einode*r, ¶ 31.

Thus, the phrase "or any Board order" should not be accorded retroactivity. A retroactive application of the statutory amendment to Section 31(d)(1) by Public Act 93-152 is not justified under the first step of the *Landgraf* analysis and runs contrary to the Illinois statutory presumption against retroactivity. (Retroactive application would also fail under the second step of the *Landgraf* test, *i.e.,* whether retroactivity would result in inequitable consequences. Here, retroactive application would unfairly expose the District to potential liability to third parties, a

significant expansion of potential liability not contemplated when the *Travieso* Order was entered.)

Under *Einoder*, the 2003 amendment to Section 31(d)(1) of the Act cannot be applied retroactively so as to provide Bruce with standing to allege a violation of the 1979 *Travieso* Order. Accordingly, summary judgment should be entered in the District's favor on Bruce's claim that the District has violated the *Travieso* Order.

III. The *Travieso* Order Does Not Apply to the Bruce Residence.

The *Travieso* Order states: "Respondent shall cease and desist from any further violations of Rules 601(a) and 602(b) in causing sewer backups at *Complainant's residence* within 120 days of the date of this order." *Ramon Travieso v Highland Hills Sanitary District*, PCB 79-72 (November 1, 1979), Slip. Op. at 4 (emphasis added). Because the Complainant in *Travieso* was Mr. Ramon Travieso, the "Complainant" referred to in page 4 of the *Travieso* Order must necessarily be Ramon Travieso - not Susan Bruce.

The Board that adopted the *Travieso* Order could have referenced the location of the cease and desist order by its street address (115 East 14th Place, Lombard) but chose not to do so. The Board's choice of language indicates that it had never intended to allow future owners of that house to pursue a violation of the 1979 *Travieso* Order in the case of a future sewer backup.[5] As drafted, the relief granted by the Board in the *Travieso* Order was, and is, personal to the Complainant—Ramon Travieso—and no one else.

Given the law in effect at the time of the *Travieso* Order, it cannot be otherwise. As discussed in Section II above, Section 31(d)(1) of the Act in effect at the time of the *Travieso* Order did not allow "any person" to file a complaint for violation of "any Board order." Consequently, under the law at the time the *Travieso* Order was entered, a future homeowner

[5] They would, however, still have the ability to pursue their own case based on any current alleged violations.

would not have been able to pursue a violation of a Board order to which it was not a party. Thus, the Board that adopted the *Travieso* Order would not have intended, or even contemplated, that the cease and desist order continue into perpetuity. It would be unfair and inappropriate for today's Board to reinterpret the 1979 Board's decision in such a way as to give it an effect that could not have been intended by the 1979 Board, whose members ruled based on the law in effect at the time.

By its own terms, the cease and desist portion of the *Travieso* Order no longer applied after Mr. Travieso left the property because that property no longer was "Complainant's residence." It was clearly the intent of the Board, when the *Travieso* Order was written in 1979, that the cease and desist order would cease to be effective when Mr. Travieso no longer resided at 115 East 14th Place, Lombard. Therefore, the Board should grant summary judgment to the District by finding that the cease and desist order in the *Travieso* case is no longer in effect and that the District did not, and cannot, violate it after the property ceased being Ramon Travieso's residence.

IV. The Cease and Desist Order in *Travieso* Should No Longer Be Given Effect.

The allegations in *Travieso* involved sewer backups occurring over a period of **72 days**. *Travieso* Order, Slip. Op. at 1. The specific cause of the backups was identified and fixed. "Respondent did not contest the fact that the main which services Complainant's home was clogged." The backups ended on May 14, 1979 after the sewer lines were cleaned. *Id.* The Board ordered the District to cease and desist from causing additional sewer backups at Mr. Travieso's residence.

A search of the Board's Clerk's Office Online database reveals no cases involving the District other than *Travieso* and the instant case. There have been no other cases filed before the

Board alleging any other sewer backups in the District. Over thirty years passed between the last *Travieso* sewer backup shortly before May 14, 1979 (*Travieso* Order, Slip. Op. at 1) and the first backup alleged by Susan Bruce occurring sometime in 2010.

In her amended complaint, Bruce alleges:

a. 3 backups in 2010

b. **No** backups in 2011

c. **No** backups in 2012

d. 6 backups in 2013

e. **No** backups in 2014

In *Travieso* there were 10 violations over 72 days caused by an admitted sewer blockage. In the instant case there were 9 alleged backups spread over a period of 4 years. The violations alleged in the Bruce case are isolated incidents remote in time from the *Travieso* sewer blockage and from each other. This pattern of alleged violations is so unlike the pattern in *Travieso* that it appears impossible for the backups to have been caused by a main sewer blockage as they were in *Travieso*. The violations Bruce alleges therefore must have a different cause or different causes.

If a 1979 "cease and desist" remains in effect after what would now be almost 37 years, it is unclear whether the Board would be keeping the 1979 version of its Board regulations also in effect. In this matter those versions are similar to the current versions, but Board rules do not exist in a vacuum. There have been changes to the underlying statute and to how the Board's rules are enforced and interpreted. For example, there have been changes to the language of the Section 33(c) factors of the Illinois Environmental Protection Act (415 ILCS 5/33(c)). In the future there are likely to be even more changes. At some point, trying to recreate not just the

words but the interpretations and context of a 1979 law becomes unreasonably and unnecessarily burdensome, especially in light of the fact that there are current versions of the laws that Mrs. Bruce could use to accomplish her purpose.

If the Board should find that the *Travieso* order applies to subsequent homeowners and may still be invoked by a third party, Respondent asks the Board to consider as a matter of reasonableness and general equity whether a sewer clog remedied 37 years ago should serve as the basis for a current allegation of violation.

The District could move to vacate the *Travieso* Order. However, after almost 37 years it would be difficult to locate Mr. Travieso (or his heirs) in order to serve him (or them) with that motion. The Board has the authority to vacate its own orders *sua sponte* and in this case it would be appropriate for the Board to do so and to grant summary judgment on that basis.

Alternatively, the Board could declare the *Travieso* Order to be moot or a nullity because it has not been enforced or invoked for 30 years. While the Board may not wish to set a general expiration date on its cease and desist orders, given the particular facts of this case it would be appropriate to declare the *Travieso* order no longer effective in 2010 and forward. Bruce is not left without a remedy should she be able to prove that the District caused or allowed her sewer backups.

Over thirty years have passed with no intervening filings with the Board on the *Travieso* cease and desist order. The complainant in this matter is different. The possible causes of the alleged sewer backups are different. There have been decades of intervening statutory, regulatory, and legal interpretation changes since 1979. As a matter of administrative convenience, general equity and reasonableness, the Board has the authority to, and should, either vacate the 1979 cease and desist order or alternatively hold that it is so stale, remote and

unrelated to the present law and facts that is no longer has any effect.

CONCLUSION

The District is entitled to summary judgment on the alleged violations of 35 Ill. Adm. Code 306.102(a) and the *Travieso* Order. First, the District does not own or operate a treatment works—an essential element of a violation of 35 Ill. Adm. Code 306.102(a). Therefore, the District cannot be in violation of 35 Ill. Adm. Code 306.102(a) or Chapter 3, Rule 601(a). Second, a 2003 amendment to Section 31(d)(1) of the Illinois Environmental Protection Act that authorized, for the first time, citizen suits before the Board for violations of Board orders cannot be applied retroactively so as to provide Bruce with standing to allege a violation of the 1979 *Travieso* Order. Third, the *Travieso* Order, by its very terms, does not apply to the Bruce property. Finally, given the age of the *Travieso* Order, its distinguishable set of facts and the changes to the body of Illinois environmental law that have occurred in the past 37 years, the *Travieso* Order should be declared moot and vacated or determined to be no longer effective.

WHEREFORE, Respondent respectfully requests that the Board grant summary judgment in its favor on the two alleged violations of the *Travieso* Order and on the allegations that it has violated 35 Ill Adm. Code 306.102(a).

Respectfully submitted,

Highland Hills Sanitary District
by its attorneys,
Podlewski & Hanson P.C.

Heidi E. Hanson

Dated: April 27, 2016

Joseph R. Podlewski Jr.
Heidi E. Hanson
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

AFFIDAVIT OF ALPHONSE SARNO JR. IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

ALPHONSE SARNO JR. being first duly sworn on oath subscribes and states as follows:

1) That he is the past president of the Highland Hills Sanitary District and that he has served in that capacity or in the capacity of Highland Hills Sanitary District board member since at least January 1, 2010.

2) That he is familiar with the functions of the Highland Hills Sanitary District.

3) That since at least January 1, 2010 the Highland Hills Sanitary District (H.H.S.D.) has conveyed the sanitary sewage originated within the H.H.S.D. to the Flagg Creek Water Reclamation District wastewater treatment plant.

4) That since at least January 1, 2010 the Flagg Creek Water Reclamation District wastewater treatment plant provided treatment for the sewage originated within the Highland Hills Sanitary District's boundaries.

5) That since at least January 1, 2010 the H.H.S.D. has not treated sanitary sewage or owned or operated any construction or devices (except sewers) used for collecting, pumping, treating, or disposing of wastewater or for recovering byproducts from wastewater.

6) That H.H.S.D. does not own or operate storm sewers.

7) That H.H.S.D. does not own or operate any manholes or structures located in the back yard of 115 E. 14th Place Lombard, IL.

FURTHER AFFIANT SAYETH NOT

Dated: 02/09/2016

Alphonse Sarno Jr.

Alphonse Sarno Jr.

Subscribed and sworn to before me this 9th day of February 2016

Pamela T Sarno

Notary Public

"OFFICIAL SEAL"
Pamela T Sarno
Notary Public, State of Illinois
My Commission Expires 5/3/2019

CERTIFICATE OF SERVICE

I, the undersigned attorney, certify that I have served on April 27, 2016 the attached:

RESPONDENT'S MOTION FOR SUMMARY JUDGMENT and RESPONDENT'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

upon the Clerk's Office On-Line, Illinois Pollution Control Board by electronic filing before 4:30, and

upon the following, by email transmission before 4:30:

Bradley Halloran, Hearing Officer at the email address of Brad.Halloran@illinois.gov. (pursuant to 35 Ill Adm. Code 101.1060(d)),

Lawrence A. Stein at the email address of lstein@agdglaw.com (pursuant to April 5, 2016 consent).

The number of pages in the email twenty (20) pages (including this Certificate).

My email address is heh70@hotmail.com.

Heidi E. Hanson

Dated: April 27, 2016

Joseph R. Podlewski Jr.
Heidi E. Hanson
Podlewski & Hanson P.C.
4721 Franklin Ave, Suite 1500
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