

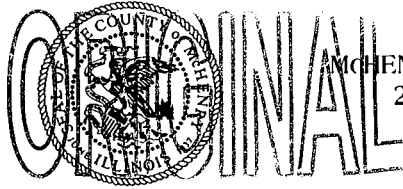
Office of the State's Attorney

McHENRY COUNTY

NINETEENTH JUDICIAL CIRCUIT OF ILLINOIS

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JUN 23 2004



GARY W. PACK
STATE'S ATTORNEY

STATE OF ILLINOIS
Pollution Control Board
McHENRY COUNTY GOVERNMENT CENTER
2200 NORTH SEMINARY AVENUE
WOODSTOCK, ILLINOIS 60098
815/334-4159
FAX 815/337-0872

June 22, 2004

ILLINOIS POLLUTION CONTROL BOARD
JAMES R. THOMPSON CENTER STE 11-500
100 W. RANDOLPH STREET
CHICAGO IL 60601
ATTN CLERK

In Re: State v. Stringini PCB 01-43

Dear Reader:

Enclosed you will find an original and TEN copies of:

**MOTION FOR INTERLOCUTORY APPEAL OF HEARING
OFFICERS ORDER OF JUNE 21, 2004 PURSUANT TO 35 IL ADC
101.518**

This motion is directed to the Board.

Please return a file stamped copy of the MOTION in the self addressed envelope.

Thank you.

Very Truly Yours,

A handwritten signature in dark ink, appearing to read 'David N. Stone', is written over a large, stylized, and somewhat illegible stamp or watermark.

David N. Stone
Assistant State's Attorney

PEOPLE OF THE STATE OF ILLINOIS
ex rel. GARY W. PACK,
 McHenry County State's Attorney,

ORIGINAL

JUN 23 2004

STATE OF ILLINOIS
Pollution Control Board

Complainant,

vs.

PCB 01-43

(RCRA Enforcement)

MICHAEL STRINGINI,

Respondent.

**MOTION FOR INTERLOCUTORY APPEAL OF HEARING OFFICERS
 ORDER OF JUNE 21, 2004 PURSUANT TO 35 IL ADC 101.518**

Now comes the Complainant, People of the State of Illinois ex.rel. Gary W. Pack, McHenry County State's Attorney, by his Assistant States Attorney, David N. Stone and moves the Pollution Control Board to reverse the order entered by Hearing Officer, Bradley P. Halloran on June 21, 2004 and in support of said motion states as follows:

1. The Hearing Officer entered an order granting an extension of time for Respondent to file a post hearing brief (Exhibit A attached)
2. The Hearing Officer by ex parte communication with the Respondent allowed Respondent to file a motion (by facsimile) to extend time to file a post hearing brief (See Exhibit B attached)
3. Complainant filed an objection to the request by facsimile (Exhibit C)
4. The Hearing Officer notes that he did not authorize Complainant to file by facsimile, but fails to mention in his ruling how the Respondent got such authorization. The Hearing Officer is obligated under 35 IL ADC 101.114 to make ex parte communications part of the record. There being no written record of such facsimile authorization it can only be concluded that the authorization came in an ex parte communication with the Respondent.
5. 35 IL ADC 101.522 provides that extensions shall be granted only on good cause shown.
6. The motion to extend contains no factual basis upon which the hearing officer could find good cause.
7. On the same day and prior to the time that the Respondent filed his motion to extend by facsimile, the Hearing Officer contacted the Complainant's counsel to get the

telephone number of the Respondent ostensibly for the reason that it had come to his attention the no post hearing brief was filed by Respondent.

8. 35 IL ADC 101.114 prohibits Board Members and Board employees from engaging in an ex parte communication designed to influence a party's action with respect to a pending regulatory proceeding.
9. The actions of the Hearing Officer on June 21, 2004 violated this Pollution Control Board Rule to the prejudice of the Complainant.

Respectfully submitted,

GARY W. PACK

McHenry County State's Attorney

By: 

David N. Stone

Assistant State's Attorney

CERTIFICATE OF SERVICE

I, David N. Stone, an Assistant State's Attorney in this case, do certify that I caused to be mailed this 22ND day of June, 2004, the foregoing MOTION FOR INTERLOCUTORY APPEAL OF HEARING OFFICERS ORDER OF JUNE 21, 2004 PURSUANT TO 35 IL ADC 101.518 upon the persons listed on the attached service list by certified mail in an envelope bearing sufficient postage with the United States Postal Service located at 1050 Country Club Road, Woodstock, Illinois 60098.


David N. Stone

SERVICE LIST

Case No. PCB 01-43

NAME:

CLERK OF ILL POLLUTION CONTROL BOARD
JAMES R THOMPSON CENTER STE 11-500
100 W RANDOLPH STREET
CHICAGO IL 60601

INTEREST:

CLERK OF BOARD

NAME:

MR MICHAEL STRINGINI
437SPRUCE CT
SCHAUMBURG IL 60193

INTEREST:

Defendant

PAUL JAGIELLO
ILLINOIS EPA
9511WEST HARRISON ST
DESPLAINES IL 60016

Non record Attorney for IEPA

DATE: June 21, 2003
Gary W. Pack, McHenry County State's Attorney
David N. Stone, Assistant State's Attorney
McHenry County Government Center
2200 N. Seminary Ave.
Woodstock, IL. 60098
815 334 4159
Atty No. 02744309

ILLINOIS POLLUTION CONTROL BOARD

June 21, 2004

PEOPLE OF THE STATE OF ILLINOIS,)	
<i>ex rel.</i> GARY W. PACK, MCHENRY)	
COUNTY STATE'S ATTORNEY,)	
)	
Complainant,)	
)	
v.)	PCB 01-43
)	(RCRA Enforcement)
MICHAEL STRINGINI,)	
)	
Respondent.)	

HEARING OFFICER ORDER

On June 21, 2004, the respondent filed a motion for an extension of time to file his post-hearing brief, to and including June 29, 2004. Also on June 21, 2004, the complainant faxed its objection to respondent's motion.

It is noted that complainant failed to receive prior approval of the Clerk of the Board or the hearing officer to file its objection by facsimile as required by Section 101.302 (d) of the Board's procedural rules. Nonetheless, complainant's objection will be filed and considered.

Over the complainant's objection, respondent's motion for an extension of time is granted. The respondent's post-hearing brief is now due to be filed on or before June 29, 2004. To that end, complainant's reply brief is now due to be filed on or before July 16, 2004.

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

EXHIBIT A

To: Mr B. P. Halloran

* To: Mr Stone Assistant State Attorney

6-21-04

312-814-3669

Request extension of June 2, to June 24th
if possible.

Michael Strazini

CASE # PCB 01-43

CP Stone D.A.
Halloran

EXHIBIT B

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS)

ex rel. GARY W. PACK,)

McHenry County State's Attorney,)

Complainant,)

vs.)

MICHAEL STRINGINI,)

Respondent.)

PCB 01-43

(RCRA Enforcement)

OBJECTION TO EXTENSION REQUEST

The Complainant objects to the request to extend to June 29, 2004 and in support of said motion states:

1. The request is unclear as to what is being extended, but it is assumed that Respondent wants the time for his post hearing brief extended.
2. No reasons are given as to why the Respondent did not file a brief in response to Complainant's brief which was filed on April 14, 2004 seven weeks prior to Respondent's June 2, 2004 due date.
3. This case is over three years old and the charges are twenty years old. A very lenient briefing schedule was set by the hearing officer in the first place.
4. While it is true that the Respondent is pro se, he is not disabled in any way and has understood all of the schedules that have heretofore been ordered.
5. The request was made by Respondent only after the hearing officer called David N. Stone on June 21, 2004 and asked for the Respondent's telephone number so he could call and inquire about his failure to file a post hearing brief, stating that since he is pro se, "the board tends to bend over backwards" apparently referring to concerns that the Respondent be given a full measure of due process.
6. Due process is to be applied to all of the litigants, not just the pro se litigants.
7. It would be an abuse of discretion for the hearing officer or the board to grant an extension.
8. This Respondent has been given more than "full due process" in this case.
9. Its time for the People to be given a measure of "due process" by denying this very late request for extension.

EXHIBIT C

Respectfully submitted,

GARY W. PACK
McHenry County State's Attorney

By: 

David N. Stone
Assistant State's Attorney

DATE: June 21, 2003
Gary W. Pack, McHenry County State's Attorney
David N. Stone, Assistant State's Attorney
McHenry County Government Center
2200 N. Seminary Ave.
Woodstock, IL. 60098
815 334 4159
Atty No. 02744309

PROOF OF SERVICE BY FAX

David N. Stone, an attorney on oath, states as follows:

That on the 21st day of June, 2004, at 1:45 o.k. the undersigned served a copy of attached OBJECTION TO EXTENSION REQUEST by sending the same by fax transmission to Bradley Halloran at fax number 312 814 3669 and Michael Stringini at 847 891 8331.


David N. Stone