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 December 23, 2003, I filed with the Illinois Pollution Control Board an original and nine copies of this Notice of Filing and the attached Boughton's Motion for Board Action on Motion for Summary Judgment, copies of which are attached and hereby served upon you.

Dated: December 23, 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
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Chicago, Illinois 60603
(312) 782-0600

BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD

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

MOTION FOR BOARD ACTION
ON MOTION FOR SUMMARY JUDGMENT

NOW COMES Respondent, Boughton Trucking and Materials, Inc. ("Boughton"), by its attorneys, Mayer, Brown, Rowe & Maw LLP, and moves the Board to act on Respondent's pending Motion for Summary Judgment filed on November 10, 2003.

In support thereof, Respondent states:

1. Plaintiff, by Hearing Officer order and agreement of the parties, was granted in excess of the fourteen day response period provided by rule to respond to Respondent's Motion for Summary Judgment. In fact, Plaintiff was given thirty-seven days to file its response. Her response was due December 17, 2003.

2. Plaintiff has failed to respond and has also failed to file a motion for extension of time to respond.

3. Plaintiff's failure to respond constitutes a waiver of any objection to the granting of the Motion for Summary Judgment. 35 Ill. Admin. Code 101.500(d). It effectively admits the uncontested facts in the Motion for Summary Judgment. A party opposing a motion for

summary judgment may not rest on its pleadings, but must "present a factual basis which would arguably entitle [it] to a judgment." Gauthier v. Westfall, 266 Ill. App. 3d 213, 219, 639 N.E. 2d 994 (2d Dist. 1994).

4. Although Plaintiff's waiver of its response is not binding on the Board, it does allow the Board to go forward and act on the Motion for Summary Judgment without further delay. Section 5 of the Environmental Protection Act ("Act") (735 ILCS 5/2-1005(c)) states: "The judgment sought shall be rendered *without delay* if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

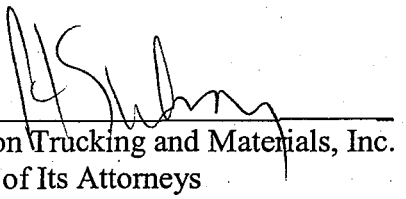
5. All admissible evidence is now before the Board in the detailed Motion for Summary Judgment filed by Respondent, including sworn affidavits, deposition transcripts and other exhibits. This evidence includes all facts relevant to the Board's consideration of the allegations in the Complaint was well as to the Section 33(c) factors, and, if the Board finds it necessary to consider a civil penalty, to the Section 42 (h) factors.

6. Further delay in Board action on the Motion for Summary Judgment is unwarranted. The Complaint in this case was filed over four years ago and Plaintiff has dragged her feet ever since, repeatedly failing to meet deadlines or provide facts substantiating the claims in the Complaint.

7. The Motion for Summary Judgment is ripe for Board decision and Respondent urges the Board to take action on that motion without further delay.

WHEREFORE, Respondent moves the Board to grant its November 10, 2003 Motion for Summary Judgment without further delay.

Respectfully submitted,



December 23, 2003

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

Patricia F. Sharkey
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CERTIFICATE OF SERVICE

Patricia F. Sharkey, an attorney, hereby certifies that a copy of the attached Notice of Filing and Boughton's Motion for Board Action on Motion for Summary Judgment was served on the persons listed below by First Class U.S. Mail, proper postage prepaid, on December 23, 2003.

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

Michael S. Blazer
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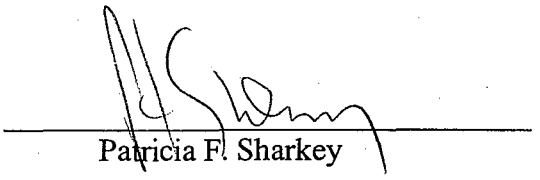

Patricia F. Sharkey

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