

25/Jan/2005 10:11 PDT FROM: The Jeff Diver Group TO: Halloran, Bradley

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JAN 25 2005

STATE OF ILLINOIS
Pollution Control Board**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

GINA PATTERMANN)

Complainant,)

PCB 99-187

v.)

(Citizen Enforcement,
Noise & Air).BOUGHTON TRUCKING AND MATERIALS,)
INC.)

Respondent.)

NOTICE OF FILING

To: See Attached Certificate of Service

PLEASE TAKE NOTICE that on the 25th day of January, 2005, the undersigned caused to be filed with the Hearing Officer herein the COMPLAINANT'S MOTION TO CANCEL HEARING DATE, a copy of which is herewith served upon you.

THE JEFF DIVER GROUP, L.L.C.



By: _____

Michael S. Blazer
THE JEFF DIVER GROUP, L.L.C.
1749 S. Naperville Road, Suite #102
Wheaton, IL 60187
(630) 681-2530

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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

COMPLAINANT'S MOTION TO CANCEL HEARING

Now comes Complainant, Gina Pattermann ("Pattermann"), by her attorneys, and for her Motion pursuant to 35 IAC 101.510 to Cancel the Hearing herein, states:

1. This matter is currently scheduled to proceed to hearing on January 31, 2005. On January 20, 2005, Pattermann filed a Motion for Voluntary Dismissal pursuant to 35 IAC 101.500(a) and 735 ILCS 5/2-1009, and including reference to 35 IAC 510.

2. Absent limited circumstances not present in this case, §2-1009 provides a plaintiff or complainant with an unfettered right to dismissal without prejudice. See *Morrison v. C.G. Wagner*, 191 Ill.2d 162, 165 (2000).

3. Under the circumstances, Pattermann would be materially prejudiced by being forced to proceed to hearing while her Motion is awaiting ruling by the Board, including being faced with the choice of either accepting a default or the wholly unnecessary expenditure of resources that proceeding to hearing would entail.

4. In addition, as a result of the filing of the pending Motion, Pattermann ceased preparation for hearing and, among other things, both parties failed to exchange trial exhibits as required by the Joint Pre-Trial Memorandum previously filed in this matter. Pattermann's counsel has thus not had an adequate opportunity to prepare for either segment of the hearing.

5. These draconian consequences would be obviated by the simple expedient of

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canceling the hearing pending a ruling by the Board on the pending Motion to Dismiss.

Based on the foregoing, Pattermann requests that the currently scheduled hearing be cancelled pending a ruling by the Board on the Motion for Voluntary Dismissal.

Respectfully submitted,
Gina Pattermann



By: _____
One of her attorneys

Michael S. Blazer
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630-681-2530

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

GINA PATTERMANN

Complainant,

v.

BOUGHTON TRUCKING AND MATERIALS,
INC.

Respondent.

PCB 99-187

(Citizen Enforcement,
Noise & Air)

CERTIFICATION

Under penalties as provided by §1-109 of the Illinois Code of Civil Procedure,
Michael S. Blazer hereby certifies as follows:

1. I am lead counsel for Gina Pattermann ("Pattermann"), the Complainant herein, and am the attorney responsible for conducting the public hearing in this matter.
2. On the morning of January 20, 2005, in advance of the telephonic status conference scheduled for that day, I called counsel for Respondent to advise them that Pattermann had that morning elected to exercise her right under §2-1009 of the Illinois Code of Civil Procedure and that I had been directed to move for Voluntary Dismissal of this matter. I confirmed this during the status conference later that day and also served and filed the subject Motion that day.
3. As a result of the decision to seek Voluntary Dismissal, no further hearing preparation was conducted by Pattermann and no exhibits were exchanged by either of the parties, as otherwise provided by the Joint Pre-Trial Memorandum filed in this matter.
4. At this juncture, I have no ability to proceed forward with the hearing in this matter, nor have I had the opportunity to properly prepare witnesses or hearing exhibits, or

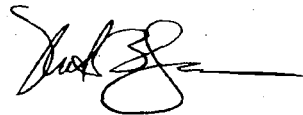
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identify and review Respondent's proposed exhibits.

5. Pattermann would be materially prejudiced if she were required to proceed to hearing under these circumstances and in light of the pending Motion to Dismiss.

Further affiant sayeth not.



Michael S. Blazer

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused the above and foregoing Notice of Filing and COMPLAINANT'S MOTION TO CANCEL HEARING, to be served via facsimile transmission upon the following:

Bradley P. Halloran
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601
Fax No. (312) 814-3669

Patricia F. Sharkey
Kevin G. Deshamais
Mayer, Brown, Rowe & Maw
190 S. LaSalle Street
Chicago, IL 60603
Fax No. (312) 706-9113

on this 25th day of January, 2005.



Michael S. Blazer

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*The Jeff Diver Group, L.L.C.*Jeffrey R. Diver†
Jeffery D. Jeep*
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Pollution Control BoardLake County Office:
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Waukegan, IL 60085Web Site: www.enviroatty.com

† Of Counsel

* Also admitted in Massachusetts

** Also admitted in New York

Michael S. Blazer
E-Mail: mblazer@enviroatty.com**TELECOPY COVER SHEET**

DATE: 1/25/2005

OUR FILE #: 00484.1

TIME: 12:10:10 PM

FAX NO. +1 (312) 814-3669

SUBJECT: Motion to Cancel Hearing

PLEASE DELIVER THE FOLLOWING MESSAGE TO:

NAME: Bradley Halloran

COMPANY: Illinois Pollution Control Board

MESSAGE:

FROM: Michael S. Blazer

NUMBER OF PAGES: 7 (including cover sheet)

PLEASE CALL US IF THE MESSAGE YOU RECEIVE WAS INCOMPLETE OR NOT LEGIBLE.
OUR TELEPHONE NUMBER IS 630-681-2530.

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