

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. Eric Rinehart, State's Attorney)
for Lake County, Illinois,)
))
Complainant,)
))
v.)
))
ILLINOIS DEPARTMENT OF)
TRANSPORTATION,)
))
Respondent.)

PCB No. 2023-108
(Enforcement Noise)

NOTICE OF FILING

To: Lisle A. Stalter
Assistant State's Attorney
Lake County State's Attorney's Office
18 N. County Street
Waukegan, IL 60085
847-377-3050
lstalter@lakecountyil.gov

Please take notice that on the 31st day of July, 2023, Respondent, Illinois Department of Transportation's Motion for Leave to File Reply in Support of Its Partial Moton to Dismiss was filed with the Clerk of the Pollution Control Board, via electronic filing.

Respectfully submitted,

ILLINOIS DEPARTMENT OF TRANSPORTATION,
Respondent,

By: /s/Matthew Dougherty
Matthew D. Dougherty
Special Assistant Attorney General
Assistant Chief Counsel
Illinois Department of Transportation
2300 S. Dirksen Parkway, Room 313
Springfield, Illinois 62764
Phone: 217-785-7524
E-mail: Matthew.Dougherty@illinois.gov

By: /s/Erin Walsh

Erin Walsh
Special Assistant Attorney General
Assistant Chief Counsel
Illinois Department of Transportation
69 West Washington Street, Suite 2100
Chicago, Illinois 60602
Phone: 312-793-2965
E-mail: Erin.walsh2@illinois.gov

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CERTIFICATE OF SERVICE

Lisle A. Stalter
Assistant State's Attorney
Lake County State's Attorney's Office
18 N. County Street
Waukegan, IL 60085
847-377-3050
lstalter@lakecountyil.gov

The undersigned, being first duly sworn upon oath, certifies that she caused a copy of the Illinois Department of Transportation's Motion for Leave to File Reply in Support of its Partial Motion to Dismiss to be served upon the above named at the above address via email on July 31, 2023.

Respectfully submitted,

ILLINOIS DEPARTMENT OF TRANSPORTATION,
Respondent,

By: /s/Matthew Dougherty
Matthew D. Dougherty
Special Assistant Attorney General
Assistant Chief Counsel
Illinois Department of Transportation
2300 S. Dirksen Parkway, Room 313
Springfield, Illinois 62764
Phone: 217-785-7524
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By: /s/Erin Walsh
Erin Walsh
Special Assistant Attorney General
Assistant Chief Counsel
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Date: July 31, 2023

mislabeled to avoid material prejudice in that Respondent may be required to engage in discovery related to a cause of action that clearly fails to state a claim. Respondent's proposed reply is attached hereto as Exhibit A.

4. Complainant will not be prejudiced by Respondent filing a short reply making the Board aware of relevant case law supporting Respondent's argument that its motion should be considered on the merits regardless if the motion for dismissal was mislabeled, so long as Complainant has been adequately apprised of the basis of Respondent's arguments for dismissal.

WHEREFORE, Respondent respectfully moves this HONORABLE BOARD to grant its motion for leave to file a Reply in Support of its Partial Motion to Dismiss pursuant to 35 Ill. Admin. Code 101.500

Respectfully submitted,

ILLINOIS DEPARTMENT OF TRANSPORTION,
Respondent,

By: /s/Matthew Dougherty
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Special Assistant Attorney General
Assistant Chief Counsel
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By: /s/Erin Walsh
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EXHIBIT A

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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ILLINOIS DEPARTMENT OF)
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RESPONDENT’S REPLY IN SUPPORT OF ITS PARTIAL MOTION TO DISMISS

Respondent, Illinois Department of Transportation, (“IDOT” or the “Respondent,”), by and through its attorneys, files its Reply in Support of its Partial Motion to Dismiss pursuant to 35 Ill. Admin. Code 101.500, in order to respond to one of Complainant’s arguments to avoid material prejudice that would result should the Board decline to consider Respondent’s partial motion to dismiss.

ARGUMENT

In response to Respondent’s partial motion to dismiss arguing that Complainant has failed to state a claim under Section 901.102, the Complainant maintains that Section 103.212(b) of the Board’s procedural rules does not apply to actions filed on behalf of the People of the State of Illinois and that the Board will automatically set all complaints filed on behalf of the People for a hearing. *Response*, at 1-2. However, the Board has historically looked to Illinois civil practice for guidance in considering motions to dismiss, and has previously considered such motions—even in cases filed on behalf of the People. *People of the State of Illinois v. Inverse Investments, LLC*, PCB No. 11-79, at 7.

While Respondent may have mislabeled its motion to dismiss, the Board should nonetheless consider the partial motion to dismiss on the merits to avoid unnecessary discovery and irrelevant arguments. In this case, where Complainant has been fully apprised of the bases for Respondent's motion to dismiss and had an opportunity to respond to the arguments on the merits, see *Response* at 2-3, Complainant will suffer no prejudice from the Board considering the motion on its merits. As has been recognized by Illinois courts, a "defendant's motion to dismiss is not defeated merely by choosing the wrong statutory mechanism where the plaintiff suffered no prejudice from the improper label." *O'Callaghan v. Satherlie*, 2015 IL App (1st) 142152, ¶¶ 21-22.

Accordingly, the Board should consider Respondent's motion to dismiss to failure to state a claim on its merits and not deny the motion merely on the basis of Respondent mislabeling the motion.

WHEREFORE, Respondent respectfully moves this HONORABLE BOARD to grant its Partial Motion to Dismiss.

Respectfully submitted,

ILLINOIS DEPARTMENT OF TRANSPORTATION,
Respondent,

By: /s/Matthew Dougherty
Matthew D. Dougherty
Special Assistant Attorney General
Assistant Chief Counsel
Illinois Department of Transportation
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