

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD **RECEIVED**
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OCT - 8 2004

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 97-2
) (Enforcement)
JERSEY SANITATION CORPORATION,)
an Illinois corporation,)
)
Respondent.)

RESPONSE TO MOTION FOR SANCTIONS

NOW COMES Respondent, JERSEY SANITATION CORPORATION, through its undersigned attorney, and hereby submits its response to the "Motion for Sanctions, Request to Close Record" filed by Complainant. Respondent states as follows:

1. Complainant has filed a motion contending that a "sanction" should be imposed against Respondent to prohibit Respondent from filing a closing brief.
2. In June 2003 the hearing officer scheduled the hearings in this case. Pursuant to that schedule, hearings began on September 23, 2003. Just four days earlier, on September 19, 2003 (three months after the hearing officer had established the schedule), Complainant tendered to Respondent an "amended" opinion witness disclosure that for the first time raised an issue concerning groundwater at the facility. Hearings were held on September 23 and 24, and the hearing officer denied Respondent's motion to bar testimony and documentary submissions by Complainant on the new issue; however, because of the surprise to Respondent, the hearing officer permitted Respondent to identify new evidence to respond to Complainant's new evidence.

3. Transcripts of the first two days of hearing, which constituted the largest portion of hearings, were available to the parties by October 7, 2003.
4. Rather than proceeding with the reconvened hearing on October 17, 2003, Complainant requested, and the hearing officer granted, leave to depose the two witnesses identified by Respondent to respond to Complainant's new issues. These depositions were the first and only depositions conducted by Complainant in this case; aside from the issue raised by Complainant's tardy disclosure, all other evidence had been introduced in the case prior to these two depositions.
5. In December 2003 the hearing officer scheduled the reconvened hearing to be held on January 13, 2004. Hearing was held that day, at the conclusion of which all parties rested. The hearing officer set a schedule requiring Complainant's closing brief to be filed on or before March 15, 2004.
6. Complainant did not file any brief until April 19, 2004, and at that time she filed a motion for leave to file instanter as a result of the extreme length (138 pages) of Complainant's brief.
7. By order entered on September 29, 2004, the hearing officer granted Complainant's motion for leave to file the brief.
8. Respondent recognizes and apologizes for the inability to complete the brief prior to the date of this response. Throughout the preceding months Counsel has anticipated stretches of time sufficient to draft the brief; however, without exception emergencies have arisen with other of Counsel's cases, or other projects have interfered, which have kept Counsel from attending to the brief. Among other things, Counsel has filed more than a dozen briefs or related pleadings with various courts, some on expedited briefing schedules, since June. In addition, Counsel has been required to attend to

numerous matters with non-waiveable (i.e., jurisdictional) deadlines, some with this Board, some with various courts. In addition to all this, Counsel's ability to timely and efficiently draft and file his legal work product has been affected negatively by a complete turnover in Counsel's staff that occurred this summer; only now has the staff begun to fully come up to speed with the demands of Counsel's practice.

9. Complainant's motion also identifies circumstances that have interfered with Counsel's finalization of the brief. As Complainant notes, the long delay since the September 2003 hearings has meant that Respondent must "re-familiarize [himself], once again, after the passage of time, with the extensive record that exists in this matter, including all facts and argument." (Complainant's motion, at 2, para. 8). Through no fault or cause of Respondent, by the time Complainant filed its brief on April 19, 2004, seven months had already passed since the original hearings, and three months had passed since the reconvened January hearing. In addition, Respondent has been faced with the daunting length of Complainant's brief, as well as the uncertainty with respect to its filing.
10. Respondent's motion contains a number of inaccuracies or misleading suggestions. Although Complainant's brief was filed five weeks after its original due date, it was filed a full six months after the availability of the transcript of the first hearing days (in which ninety percent of this case's evidence was submitted). The record was completed on January 13, 2004, which was four months before Complainant submitted its brief. And the brief was not "filed" until September 29, 2004; prior to that date, Complainant's motion for leave to file the overlength brief had not been allowed.

11. Most significantly, Complainant misstates the delays previously caused in this case.

The complaint was originally filed against Respondent in 1997. In June 2003 the hearing officer set the case for hearing to begin September 23. Despite all that available time, Complainant waited until September 19, 2003, to identify what Complainant believes to be critical opinions to support its complaint. Every action taken by Respondent from that point forward was a reasonable effort to defend against the new and surprise opinion submitted by Complainant.

12. In any event, it is beyond question that this case is ready for final preparation for this Board's disposition. Respondent requests that this Board not impose the "death penalty" requested by Complainant, partly because it would be inequitable to Respondent to preclude its Counsel from filing a response brief merely because Counsel has been extraordinarily busy, partly because the delay has not been entirely the fault of Respondent in any event, but rather Complainant is directly responsible for a large share, and partly because, in point of fact, no brief to which Respondent was to respond had been filed until recently.

13. Respondent instead requests that it be granted until October 22, 2004—just over two weeks after the submittal of this response—as a final deadline within which for Respondent to file its brief. Counsel has reviewed his file and determined a very reasonable opportunity to file the brief within this time frame.

WHEREFORE Respondent, JERSEY SANITATION CORPORATION, requests that this Board deny the "Motion for Sanctions, Request to Close Record" submitted by Complainant, grant to Respondent until October 22, 2004, within which to file its response brief, and grant to Respondent all such other and further relief as this Board deems just and appropriate.

Respectfully submitted,

JERSEY SANITATION CORPORATION,
Respondent,

By its attorneys
HEDINGER LAW OFFICE

By: 
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STATE OF ILLINOIS
Pollution Control Board

JERSEY SANITATION CORPORATION,)
an Illinois corporation,)
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Petitioner,)
v.)
ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
)
Respondent.)

PCB No. 97-2
(Enforcement)

NOTICE OF FILING AND PROOF OF SERVICE

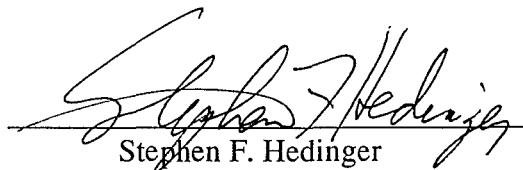
The undersigned certifies that an original and nine copies of the foregoing Response to Motion for Sanctions were served upon the Clerk of the Illinois Pollution Control Board, and one copy to each of the following parties of record in this cause by enclosing same in an envelope addressed to:

Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Suite 11-500
Chicago, IL 60601

Jane McBride
Office of Attorney General
500 South Second Street
Springfield, IL 62706

Carol Sudman
Hearing Officer
Illinois Pollution Control Board
1021 N. Grand Avenue East
Springfield, IL 62794

with postage fully prepaid, and by depositing said envelope in a U.S. Post Office Mail Box in Springfield, Illinois before 7:30 p.m. on October 6, 2004.


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