

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

TOM EDWARDS/RIVER RESCUE,	)	
	)	
Petitioner,	)	
	)	PCB No. 08-42
v.	)	
	)	(Permit Appeal – Third Party)
PEORIA DISPOSAL COMPANY,	)	
and ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondents.	)	

**NOTICE OF FILING**

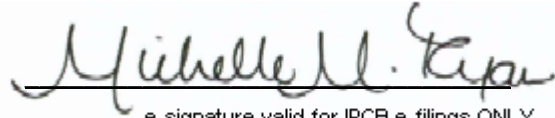
To: Tom Edwards, River Rescue  
902 W. Moss Avenue  
Peoria, Illinois 61606

Claire Manning  
Brown, Hay & Stephens, LLP  
205 S. Fifth Street, Suite 700  
Springfield, Illinois 62701

Brian Meginnes  
Janaki Nair  
Elias, Meginnes, Riffle & Seghetti, P.C.  
416 Main Street, Suite 1400  
Peoria, Illinois 61602-1611

PLEASE TAKE NOTICE that on this date I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois the following instrument(s) entitled SPECIAL AND LIMITED APPEARANCE and COMBINED MOTION TO CONTEST JURISDICTION AND TO DISMISS.

Respectfully Submitted,



e-signature valid for IPCB e-filings ONLY

Michelle M. Ryan  
Special Assistant Attorney General

Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
(217) 782-5544

Dated: February 6, 2008

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TOM EDWARDS/RIVER RESCUE,	)	
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PROTECTION AGENCY,	)	
	)	
Respondents.	)	

SPECIAL AND LIMITED APPEARANCE

The undersigned hereby enters a special and limited appearance in the above-captioned matter as counsel for the Illinois Environmental Protection Agency.

Respectfully submitted,



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Michelle M. Ryan  
Special Assistant Attorney General

DATED: February 6, 2008

Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Springfield, IL 62702-4059  
(217) 782-5544

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Petitioner,	)	
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PROTECTION AGENCY,	)	
	)	
Respondents.	)	

RESPONDENT ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S  
COMBINED MOTION TO CONTEST JURISDICTION AND TO DISMISS

NOW COMES the Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“Illinois EPA”), by and through its attorney, Michelle M. Ryan, Special Assistant Attorney General, pursuant to Sections 101.500(a) and 101.506 of the Illinois Pollution Control Board’s (“Board”) Rules and Regulations, 35 Ill. Adm. Code 101.500(a), 101.506, and respectfully states as follows:

OBJECTION TO PERSONAL JURISDICTION

1. The Board opened its docket in this case on January 4, 2008.
2. Parties to Board proceedings are required to serve all documents filed with the Clerk’s Office. 35 Ill. Adm. Code 101.304(b). “A proceeding is subject to dismissal, and parties are subject to sanctions...if service is not timely made.” 35 Ill. Adm. Code 101.304(d).
3. Proof of service must “accompany all filings of all parties.” 35 Ill. Adm. Code 101.304(d).
4. As of February 5, 2008, the record in this case contains three filings by Petitioner, and no affidavits or certificates of service upon any other party.

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5. Over a month after the original “initial filing,” Illinois EPA has not been served, and has only inadvertently been made aware of this case. Therefore, the Board does not have personal jurisdiction over Illinois EPA in this matter.

6. “[D]effective service cannot be cured by a defendant’s actual knowledge of a case.” *Sarkissian v. Chicago Bd. of Educ.*, 308 Ill. App. 3d 137, 152 (1<sup>st</sup> Dist. 1999).

7. When an objection to personal jurisdiction is made, an order sustaining or overruling said objection is required by 735 ILCS 5/2-301(b) (2006). *Ryburn v. People*, 349 Ill. App. 3d 990, 993 (4<sup>th</sup> Dist. 2004).

8. This issue of personal jurisdiction must logically be considered prior to consideration of all other issues in the case. *See Id.* at 993 (citation omitted).

9. Because Petitioner has made no attempt at service on Illinois EPA, which is apparent from the record, the Board has no jurisdiction over Illinois EPA in this matter, and dismissal of this action is appropriate for this reason alone.

MOTION TO DISMISS BASED ON THE PLEADINGS (2-615)

10. Objections to personal jurisdiction may be combined with motions to dismiss and for summary judgment. 735 ILCS 5/2-301(a) (2006).

11. The rule specific to third party RCRA appeals requires that the petition contain “a statement of the reasons supporting that review” as well as a “demonstration that any issues being raised were raised during the public comment period.” 35 Ill. Adm. Code 705.212(c).

12. Neither of these requirements are met by any of the three “initial filings” in this case.

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13. The Board's general rule for filing permit appeals also requires that the petition contain a copy of the issued permit, in addition to a "statement specifying the grounds of appeal." 35 Ill. Adm. Code 105.210(a) and (c).

14. The required statement of grounds of appeal has not been met by any of the three "initial filings" in this case.

15. A copy of the issued permit was not included until the third "initial filing," which was postmarked January 5, 2008.

16. The Environmental Protection Act ("Act") only allows for third party petitions to contest a RCRA permit within 35 days after the date of issuance. 415 ILCS 5/40(b) (2006).

17. The date of issuance of the permit at issue in this case was November 27, 2007, and therefore the third "initial filing" in this case was not timely made. As such, it should not be considered as part of the petition.

18. Although the pleadings request an extension of the filing deadline, no such extension is available at law to the Petitioner, because no such authority has been granted to the Board by the Act.

19. For all of the reasons stated above, the pleadings are defective on their face, and should be dismissed.

MOTION FOR INVOLUNTARY DISMISSAL (2-619)

20. The Board has recently re-styled the Petitioner's name in this case as "Tom Edwards/River Rescue."

21. Tom Edwards is an individual. The pleadings contain no indication as to what type of legal entity "River Rescue" may be.

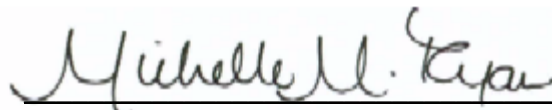
22. All entities other than individuals must appear before the Board through a licensed attorney. 35 Ill. Adm. Code 101.400(a)(2); 705 ILCS 205/1 (2006).

23. According to the Attorney Registration and Disciplinary Commission's website, "Tom Edwards" of Peoria is not a licensed attorney in Illinois. Therefore, Tom Edwards cannot represent "River Rescue," in this matter.

24. The Petition must either be dismissed as to River Rescue, or re-styled to indicate that Tom Edwards is appearing only on his own behalf as an individual.

WHEREFORE, Illinois EPA respectfully requests that the Board grant Respondent's Illinois EPA's Combined Motion to Contest Jurisdiction and Dismiss and dismiss this action in its entirety for one or more of the reasons stated above.

Respectfully submitted,



e-signature valid for IPCB e-filings ONLY

Michelle M. Ryan  
Special Assistant Attorney General

DATED: February 6, 2008

Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Springfield, IL 62702-4059  
(217) 782-5544

**CERTIFICATION**

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument entitled **RESPONDENT ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S COMBINED MOTION TO CONTEST JURISDICTION AND TO DISMISS** are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.



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Michelle M. Ryan  
Special Assistant Attorney General

DATED: February 6, 2008

Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
(217) 782-5544

**PROOF OF SERVICE**

I hereby certify that I did on the 6<sup>th</sup> day of February, 2008, send by U.S. Mail with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instrument(s) entitled SPECIAL AND LIMITED APPEARANCE and COMBINED MOTION TO CONTEST JURISDICTION AND TO DISMISS

To: Tom Edwards, River Rescue  
902 W. Moss Avenue  
Peoria, Illinois 61606

Claire Manning  
Brown, Hay & Stephens, LLP  
205 S. Fifth Street, Suite 700  
Springfield, Illinois 62701

Brian Meginnes  
Janaki Nair  
Elias, Meginnes, Riffle & Seghetti, P.C.  
416 Main Street, Suite 1400  
Peoria, Illinois 61602-1611

and an electronic copy of the same foregoing instrument on the same date via electronic filing

To: John Therriault, Acting Clerk  
Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601



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