

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

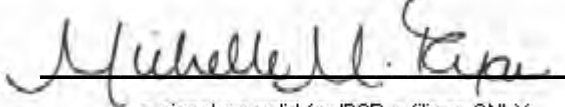
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|------------------------|---|---------------------|
| ILLINOIS ENVIRONMENTAL | ) |                     |
| PROTECTION AGENCY,     | ) |                     |
|                        | ) |                     |
| Complainant,           | ) | AC 11-23            |
|                        | ) |                     |
| v.                     | ) | (IEPA No. 65-11-AC) |
|                        | ) |                     |
| DENNIS WEILER,         | ) |                     |
|                        | ) |                     |
| Respondent.            | ) |                     |

**NOTICE OF FILING**

To: Roscoe D. Cunningham, Esq.  
Barrister Inn  
11<sup>th</sup> & State  
Lawrenceville, Illinois 62439

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 COMPLAINANT'S RESPONSE TO MOTION TO RECONSIDER.

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: August 17, 2011

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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| DENNIS WEILER,         | ) |                     |
|                        | ) |                     |
| Respondent.            | ) |                     |

COMPLAINANT'S RESPONSE TO  
MOTION TO RECONSIDER

NOW COMES the Complainant, the Illinois Environmental Protection Agency ("Illinois EPA"), by and through its attorney, Special Assistant Attorney General Michelle M. Ryan, pursuant to 35 Ill. Adm. Code 101.500(d), and respectfully states as follows:

(1) On May 2, 2011, Illinois EPA issued an Administrative Citation ("AC") to Respondent, Dennis Weiler, based on an inspection conducted on March 29, 2011.

(2) On May 17, 2011, Illinois EPA filed proof that Respondent had been served with the AC on May 5, 2011.

(3) On July 7, 2011, the Illinois Pollution Control Board ("Board") issued a final default order against Respondent due to his failure to timely file a Petition for Review, as required by 415 ILCS 5/31.1(d)(1) (2008).

(4) On August 3, 2011, Illinois EPA received a copy of Respondent's Motion to Reconsider Opinion and Order Entered 7/7/2011.

(5) Respondent contends in said motion that he filed a Petition for Review on June 13, 2011, and attaches a copy of the alleged filing as Exhibit 1 to the motion.

(6) There is no evidence in the Board's docket for AC 11-23, available through the Clerk's Office On-Line ("COOL") system, that any Petition for Review has ever been filed in this case.

(7) Exhibit 1 to Respondent's motion is unsigned and contains no proof of filing, nor is there any affidavit or certification attesting to said filing.

(8) If a respondent fails to file a Petition for Review within the 35 days set by 415 ILCS 5/31.1(d)(1), the Board has no jurisdiction to hear the Petition. *Illinois EPA v. Reynolds Service Co.*, AC 09-14, slip op. at 4 (December 4, 2008), citing *Illinois EPA v. Jack Busby*, AC 01-6, slip op at 1 (December 7, 2000).

(9) Because Respondent did not file a Petition for Review in this case, the Board was statutorily required to find that he committed the violations as alleged in the AC and to impose the statutory penalty for said violations. *Illinois EPA v. Ken and Ella Cook*, AC 08-11, slip op. at 2 (May 15, 2008).

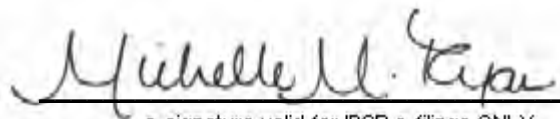
(10) A motion to reconsider may appropriately raise newly discovered evidence not previously available, changes in the law, errors in the Board's application of prior law, or overlooked facts in the record. *See, id.* at 2 (citations omitted).

(11) Respondent's motion raises none of the above-listed issues appropriate for a motion to reconsider. Furthermore, it is altogether unsupported by affidavit or certification, and cites no support from statutory, regulatory, or case law.

WHEREFORE, for the foregoing reasons, Illinois EPA requests that the Board deny Respondent's Motion to Reconsider.

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,  
Complainant

Dated: August 17, 2011

A handwritten signature in black ink, appearing to read "Michelle M. Ryan", is written over a horizontal line.

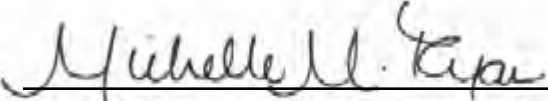
e-signature valid for IPCB e-filings ONLY

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

**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 COMPLAINANT'S RESPONSE TO MOTION TO RECONSIDER 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

Illinois Environmental Protection Agency  
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Dated: August 17, 2011

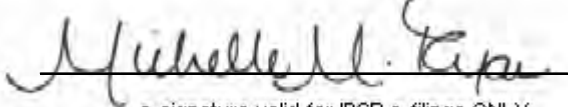
**PROOF OF SERVICE**

I hereby certify that I did on the 17<sup>th</sup> day of August, 2011, 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 COMPLAINTANT'S RESPONSE TO MOTION TO RECONSIDER

To: Roscoe D. Cunningham, Esq.  
Barrister Inn  
11<sup>th</sup> & State  
Lawrenceville, Illinois 62439

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

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

  
e-signature valid for IPCB e-filings ONLY  
Michelle M. Ryan  
Special Assistant Attorney General

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