

John Therriault - Fwd: Six-M Corp.and William Maxwell

From: Carol Webb
 To: Crowley, Kathleen; Therriault, John
 Date: 2/27/2012 10:52 AM
 Subject: Fwd: Six-M Corp.and William Maxwell

RECEIVED
 CLERK'S OFFICE

FEB 27 2012

STATE OF ILLINOIS
 Pollution Control Board

John,
 Please enter this email into the record for PCB 12-35.

Pct#1



Print Only When
 Necessary

Green
 Government

>>> "Davis, Thomas E." <TDavis@atg.state.il.us> 2/23/2012 9:40 AM >>>

Good morning. The call in number for Monday's 10:30 status conference is 214/765-0479 (please note the area code is not 217) and the access code is 8848636.

The Board's order issued February 12th indicates that the People's Response to Affirmative Defenses filed on December 6th has been construed by the Board as a motion to strike. The Response was not intended as a motion to strike nor does it request that the alleged affirmative defense "be stricken as improper." Slip. Op at 2.

As an Assistant Attorney General, I am obligated to raise this issue (through this message) to the hearing officer and the parties. During the status conference, I would like to explore how the Board may address and resolve its mistake. The mistake is not necessarily the Board's *sua sponte* action (i.e. construing the December 6th responsive filing as a "motion"). The Board erred by basing its ruling upon a misreading of the filing: "In a December 6, 2011 filing, the People objected to the affirmative defense *and requested that it be stricken as improper.*" Slip. Op at 2. The words "strike" and "stricken" do not appear in the Response. No relief was requested or necessary. However, the onus is on the Board to correct this particular mistake and (more generally) to avoid abrupt departures in its practices.

Thomas Davis, Chief
 Environmental Bureau/Springfield
 Illinois Attorney General's Office
 500 South Second Street
 Springfield, Illinois 62706
 phone: 217/782-7968
 fax: 217/524-7740
tdavis@atg.state.il.us

E-MAIL CONFIDENTIALITY NOTICE: This electronic mail message, including any attachments, is for the intended recipient(s) only. This e-mail and any attachments might contain information that is confidential, legally privileged or otherwise protected or exempt from disclosure under applicable law. If you are not a named recipient, or if you are named but believe that you received this e-mail in error, please notify the sender immediately by telephone or return e-mail and promptly delete this e-mail and any attachments and copies thereof from your system. If you are not the intended recipient, please be aware that any copying, distribution, dissemination, disclosure or other use of this e-mail and any attachments is unauthorized and prohibited. Your receipt of this message is not intended to waive any applicable privilege or claim of confidentiality, and any prohibited or unauthorized disclosure is not binding on the sender or the Office of the Illinois Attorney General. Thank you for your cooperation.