

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ROCK RIVER WATER RECLAMATION)
DISTRICT)

Petitioner,)

v.)

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY)

Respondent.)

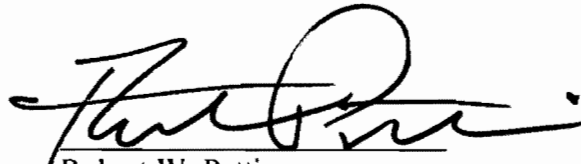
PCB No. 13-11
(Permit Appeal-Water)

NOTICE OF ELECTRONIC FILING

PLEASE TAKE NOTICE that on the 5th day of March, 2013, the undersigned filed its Response to Petitioner's Motion to Reopen the Record and for Leave to File *Instante*, by electronic filing. A true and correct copy of the same is attached hereto, and a copy submitted via email.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By LISA MADIGAN
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**RESPONSE TO PETITIONER'S MOTION TO REOPEN THE RECORD
AND LEAVE TO FILE *INSTANTER***

Respondent, Illinois Environmental Protection Agency (the "Illinois EPA"), hereby submits its Response to Rock River Water Reclamation District's (the "Petitioner") Motion to Reopen the Record and Leave to File *Instanter*. In support, the Illinois EPA states as follows:

1. On December 8, 2012, the Hearing Report of the Hearing Officer set forth a schedule for the filing of Post Hearing briefs from both parties. The briefing schedule set on December 8, 2012, afforded the Petitioner until January 10, 2013, to file its post hearing brief; the Illinois EPA was afforded until January 31, 2013, to respond; and the Petitioner given through February 8, 2013, to reply.

2. On January 10, 2013 the Petitioner requested additional time to complete its post hearing brief, through January 21, 2013. The Hearing Officer Order of January 10, 2013, granted the Petitioner's request for extension of time, and set a new briefing schedule with Petitioner's brief to be filed on or before January 21, 2013; Illinois EPA's response to be filed on or before February 11, 2013; and Petitioner's reply due no later than February 25, 2013.

3. Petitioner failed to file its brief on January 21, 2013.

4. Four days later, on January 24, 2013, Petitioner filed its Post-Hearing Brief along with a Motion for Leave to File *Instanter*.

5. In its 1/24/13 Motion for Leave to File *Instanter*, Petitioner requested that the Hearing Officer accept its late filing, and states it would “endeavor” to file a reply by February 25, 2013.

6. On January 31, 2013 the Hearing Officer issued an Order on the Petitioner’s Motion for Leave to File *Instanter*, which set a new post hearing briefing schedule and a date for the record to close. The Hearing Officer Order of January 31, 2013, is unequivocal in setting the deadline for the Illinois EPA’s response brief, and in setting the deadline for the Petitioner to file its reply, if any, on February 25, 2013, which is also the date set for the record to be closed. There is no doubt that February 25, 2013, was intended to be the final day for submissions to the record before the record closed and submitted to the Illinois Pollution Control Board (the “Board”) for review and decision.

7. Illinois EPA filed its Response brief timely and in accord with the Hearing Officer Order on February 15, 2013.

8. On February 25, 2013, the record closed.

9. As of February 25, 2013, the Petitioner made no request for an extension of time to file its reply, had not contacted Illinois EPA’s counsel to discuss a late filing, and certainly did not file a motion for extension of time beyond the close of the record with the Board.

10. On March 4, 2013, Petitioner emailed the hearing officer to discuss an extension of time to file its reply brief. Counsel for Illinois EPA were only included in this email at the initiative of the Hearing Officer.

11. Counsel for Illinois EPA made it clear that it would not agree to reopen the record or any further extensions of time given the late request.

12. Section 101.522 of the Board General Provisions states as follows:

Motions for Extension of Time

The Board or hearing officer, for good cause shown on a motion after notice to the opposite party, may extend the time for filing any document or doing any act which is required by these rules to be done within a limited period, either before or after the expiration of time.

13. Clearly, the Petitioner failed in its endeavor to file its reply brief in compliance with the Hearing Officer Order or before the close of the record. Just as clearly, the Petitioner fails to provide good cause why an extension, and reopening of the record, should be allowed in this matter. The petitioner's stated cause for failing to file its reply before the February 25, 2013, close of the record is that the personal and business travel of counsel for Petitioner interfered with completion of the Reply. This does not constitute "good cause".

14. Petitioner was aware of the date the record would close in this matter for nearly one month. At no time in the ten days between the Illinois EPA's Response and the close of the record did the Petitioner file for an extension of time, or reach out to discuss the matter with Illinois EPA's counsel. Indeed, it was not until a week past the closing of the Record that Counsel for the Petitioner made any effort to contact the Board or counsel for Illinois EPA to discuss the reopening of the record and the late filing of its reply.

15. Petitioner has shown a consistent lack of diligence in abiding the Hearing Officer Orders in this matter. This lack of diligence led to two prior extensions, including a request for extension after the deadline to file the original Post Hearing Brief had passed. Petitioner's disregard for the rules should not be rewarded now that the record is closed.

16. For the reasons stated above, Respondent objects to Petitioner's request to reopen the record and for Leave to File its Reply *instanter* and asks the Board to deny this late Motion for the reason that the Petitioner fails to show good cause for reopening the record or for any extension of time to file its Reply Brief, (which, incidentally, ignores the Illinois EPA's stated reasons for denial of Petitioner's Permit Application and merely continues the effort to reframe the Illinois EPA's basis for denial).

Wherefore, the Illinois Environmental Protection Agency, respectfully requests that the Illinois Pollution Control Board deny the Petitioner's Motion to Reopen the Record and Leave to File *Instanter*, and submit the record as constituted on February 25, 2013, for review and decision.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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