

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

11/24/16

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Complainant,)
v.)
JULIE WEBBER,)
Respondent.)

AC 12-16
(IEPA No. 341-11-AC)

 ORIGINAL

NOTICE OF FILING

To: Julie Webber
1013 Beech Street
Chillicothe, Illinois 61523

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 MOTION TO STRIKE.

Respectfully Submitted,



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: November 23, 2016

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	AC 12-16
)	
v.)	(IEPA No. 341-11-AC)
)	
JULIE WEBBER,)	
)	
Respondent.)	

COMPLAINANT’S MOTION TO STRIKE

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, and respectfully states as follows:

(1) On November 17, 2016, Illinois EPA received service of a document from Respondent entitled “Response to Administrative Citation and EPA Environmental Protection Agency Complaints.” The Notice of Filing attached to said document stated that the document was entitled “Post - Hearing Brief of respondent” (sic).

(2) The document in question is a written statement of facts by Respondent, with some obscure references to alleged caselaw that cannot be adequately identified from the information provided.

(3) “Any participant may submit written statements relevant to the subject matter at *any time prior to hearing or at hearing*. Participants submitting such a statement will be subject to cross-examination by any party.” 35 Ill. Adm. Code 101.628(b) (emphasis added).

(4) None of the facts contained in Respondent's statement were presented at hearing and Complainant was not given an opportunity to cross examine Respondent on her statement.

(5) At hearing on October 5, 2016, Respondent refused to cross-examine Illinois EPA's witness or present any evidence whatsoever in her defense, despite being clearly informed by the Hearing Officer that it was her only opportunity to do so. *See* Transcript at 15.

(6) "An administrative agency may only take official notice of facts when they are disclosed and put on the record so the parties may be afforded an opportunity to be heard." *Emerald Performance Materials, LLC v. Illinois Pollution Control Bd.*, 2016 IL App (3d) 150526, ¶ 24, *citing Caterpillar Tractor Co. v. Pollution Control Board*, 48 Ill.App.3d 655, 661-62, 6 Ill.Dec. 737, 363 N.E.2d 419 (1977).

(7) Therefore, the Board cannot properly consider any of Respondent's statement in making its decision in this case.

WHEREFORE, the Illinois Environmental Protection Agency requests that the Board strike Respondent's Response to Administrative Citation and EPA Environmental Protection Agency Complaints in its entirety.

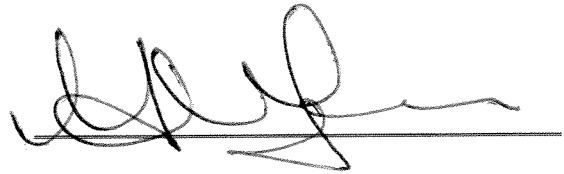
ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,
Complainant

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

Michelle M. Ryan
Special Assistant Attorney General

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 MOTION TO STRIKE 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.

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

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: November 23, 2016

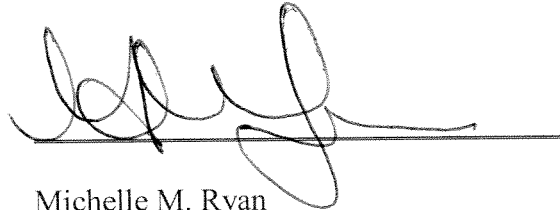
PROOF OF SERVICE

I hereby certify that I did on the 23rd day of November 2016, 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 POST-HEARING BRIEF OF COMPLAINANT

To: Julie Webber
1013 Beech Street
Chillicothe, Illinois 61523

and the original and four (4) copies of the same foregoing instrument on the same date

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

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

Michelle M. Ryan
Special Assistant Attorney General

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