

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

CHATHAM BP, LLC,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	PCB No. 15 – 173
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	(UST Appeal)
Respondent.	)	

**NOTICE OF FILING**

PLEASE TAKE NOTICE that today I have filed with the Office of the Clerk of the Pollution Control Board the Motion to Quash of CHATHAM BP LLC. Copies of these documents are hereby served upon you.

To: Pollution Control Board, Attn: Clerk  
100 West Randolph Street  
James R. Thompson Center, Suite 11-500  
Chicago, Illinois 60601-3218

Scott B. Sievers  
Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue, East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

Carol Webb  
Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
P.O. Box 19274  
Springfield, Illinois 62794-9274

Respectfully submitted,  
CHATHAM BP, LLC

Dated: May 19, 2015

By:     /s/William D. Ingersoll      
Its Attorney

**BROWN, HAY & STEPHENS, LLP**  
William D. Ingersoll  
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**PETITIONER’S MOTION TO QUASH RESPONDENT’S RULE 237(b) NOTICE**

Petitioner, CHATHAM BP, LLC, by William D. Ingersoll, one of its attorneys, pursuant to 35 Ill. Adm. Code 100.500, 100.502 and 100.504<sup>1</sup>, hereby moves the Hearing Officer to enter an order quashing the so-called Rule 237(b) Notice filed by the Respondent purporting to require the attendance of Mr. Shamsheer Singh Amar to appear at the hearing in this matter scheduled for 10:00 a.m. on May 27, 2015. In support of its motion, Petitioner says the following:

**A. UNAVAILABILITY OF MR. AMAR**

1. Mr. Amar is one of the managing members of the corporation that is the Petitioner (as can be readily confirmed from the Secretary of State online records).

2. Pursuant to inquiry by Petitioner’s counsel, it has been learned that Mr. Amar has a prior commitment that precludes his attendance at the date and time of the scheduled hearing.

**B LACK OF ANY RELEVANT INFORMATION**

3. Mr. Amar’s attendance is not necessary in any exploration of the issues in this matter and requiring him to attend would be very inappropriate. Even if there was not a prior

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<sup>1</sup> Hereinafter citations to the Board regulations will be made by section number only – e.g., Section 100.500.

commitment in his schedule, since he can add no information relevant to the issues presented in the Illinois Environmental Protection Agency (“IEPA”) decision letter of February 25, 2015.

4. It has been long-standing Pollution Control Board precedent that the decision letter frames the issues on review and the IEPA is bound by the reasons cited in the decision letter. *See Pulitzer Community Newspapers, Inc. v. IEPA*, PCB 90-142 (December 20, 1990); citing *Centralia Environmental Services, Inc. v. IEPA*, PCB 89-170 (May 10, 1990) and *City of Metropolis v. IEPA*, PCB 90-8 (February 22, 1990).

5. In this case, the stated reason for the February 25, 2015 decision was “(b)y Order of the Board for UST Appeal PCB 14-1, the Illinois Environmental Protection Agency (Illinois EPA) has re-characterized its determination for the Stage 2 Site Investigation Plan . . . .” Administrative Record, page 130<sup>2</sup>. The rejection of the plan and rejection of the budget were then exactly as stated in the May 28, 2013 decision letter that was the subject of the case referenced in the IEPA February 25, 2015 letter – *i.e.*, *Chatham BP, LLC v. IEPA*, PCB 14-1. This February 25, 2015 decision was then a result of an IEPA review of the Board’s decisions in PCB 14-1 and the effect on the prior rejections (identical in both 2013 and 2015 letters). These had already been litigated. Mr. Amar could have no knowledge of IEPA’s internal analysis of PCB 14-1. It appears that IEPA intended to document this analysis by including a number of internal emails in the Administrative Record at pp. 116 – 126.<sup>3</sup> to be

6. Admittedly, Mr. Amar’s name does appear in the record. He signed the certifications for the plan (A.R., p. 21) and budget (A.R., p. 38), but his name otherwise appears

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<sup>2</sup> Hereinafter citations to the Administrative Record will be made as “A.R. p. \_\_\_\_” or with “pp” for multiple pages.

<sup>3</sup> These emails are notably lacking in any kind of information that may have been relied upon by the decision-maker. One email is blank. Others appear to reference something attached that is not included. But, most of them have major redactions claiming “ATTORNEY-CLIENT PRIVILEGED,” but offer no basis for making the claim.

only as the addressee for decision letters. His name does not appear anywhere in the record of the analysis that was supposedly performed for the February 25, 2015 decision letter.

7. Petitioner requests that the Hearing Officer take note of the Petitioner's request for the presence of IEPA staff by comparison. Only two people were identified – the project manager for direct review of this file and the decision-maker signatory to the decision letter.

WHEREFORE, for the reasons stated above, CHATHAM BP, LLC requests that the Hearing Officer grant this Motion to Quash and enter an order quashing the Rule 237(b) Notice and excusing Mr. Amar from any required attendance at the May 27, 2015 hearing.

Respectfully submitted,

**CHATHAM BP, LLC**

By:           /s/William D. Ingersoll            
One of Its Attorneys

Dated: May 19, 2015

**BROWN, HAY & STEPHENS, LLP**

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CERTIFICATE OF SERVICE

I, William D. Ingersoll, certify that I have this date served the attached Notice of Filing and Motion to Quash, by means described below, upon the following persons:

To: Pollution Control Board, Attn: Clerk  
100 West Randolph Street  
James R. Thompson Center, Suite 11-500  
Chicago, Illinois 60601-3218  
(Via Electronic Filing)

Scott B. Sievers  
Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue, East  
P.O. Box 19276  
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Dated: May 19, 2015

By: /s/William D. Ingersoll  
William D. Ingersoll

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