

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SUSAN M. BRUCE,)	
Complainant,)	PCB # 2015-139
v.)	(Citizens - Water Enforcement)
HIGHLAND HILLS SANITARY)	
DISTRICT,)	
Respondent.)	

NOTICE OF FILING

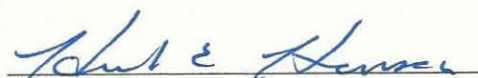
To: Lawrence A. Stein
Aronberg Goldgehn Davis & Garmisa
330 N. Wabash Avenue
Suite 1700
Chicago, Illinois 60611

PLEASE TAKE NOTICE that I have today filed with the Pollution Control Board the following document:

HIGHLAND HILLS SANITARY DISTRICT'S REPLY IN SUPPORT OF MOTION TO
QUASH SERVICE OF COMPLAINANT'S NON-EXPERT WRITTEN DISCOVERY

A copy of which is hereby served upon you.

Respectfully submitted,


Heidi E. Hanson

Dated: March 2, 2016

Joseph R. Podlewski Jr.
Heidi E. Hanson
Podlewski & Hanson P.C.
4721 Franklin Ave, Suite 1500
Western Springs, IL 60558-1720
(708) 784-0624

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HIGHLAND HILLS SANITARY DISTRICT'S REPLY IN SUPPORT OF MOTION TO QUASH SERVICE OF COMPLAINANT'S NON-EXPERT WRITTEN DISCOVERY

Respondent HIGHLAND HILLS SANITARY DISTRICT ("District"), by and through its attorneys, Podlewski & Hanson P.C., in accordance with the Hearing Officer's February 26, 2016 order and in support of its motion to the Hearing Officer to quash service of the non-expert written discovery of Complainant SUSAN M. BRUCE ("Bruce"), states as follows:

In her response to the District's pending motion to quash Bruce's service of her non-expert written discovery ("Response")¹, Bruce essentially concedes that her certificate of service was incorrect, that her discovery was not served in accordance with the Hearing Officer's December 22, 2015 order and that she ignored applicable Board Procedural Rules governing e-mail service. (Response ¶¶ 1, 4). Accordingly, the District's motion to quash service should be granted. Nonetheless, two statements contained in Bruce's response warrant a brief reply by the District.

1. In Paragraph 3 of the Response, Bruce states that: (a) "[t]he parties have been routinely emailing documents in the matter to each other since respondent's counsel became

¹ Pursuant to Hearing Officer order, Bruce was to have filed her Response on February 26, 2016. However, because it was filed after 5:00 p.m. on February 26, 2016, it is considered filed on February 29, 2016, the next business day. (35 Ill. Adm. Code 101.300(b)(1)). Therefore, the Response was not timely filed.

involved in this matter” and (b) “the respondent’s counsel e-mailed its own written discovery to complainant’s counsel.” (Response, ¶ 3). Although the District agrees that the parties have exchanged documents by e-mail, Bruce’s observation misses the point. At no time has the District ever attempted to *serve* Bruce’s counsel by e-mail with any pleading or motion paper (motion, response or reply) filed with the Board. A brief review of the District’s filings in this case readily reveals that every pleading or motion paper filed by the District with the Board in this case has been served on Bruce’s counsel (either at Huck Bouma, Aronberg Goldgehn or both) by U.S. Mail. Furthermore, Bruce’s intimation that the District’s counsel had previously agreed to accept e-mail service through its custom and practice is simply incorrect. Notwithstanding the fact that the District has never agreed to e-mail service in this case pursuant to the 35 Ill. Adm. Code 101.1060, at no time prior to the attempted e-mail service of Bruce’s non-expert written discovery on the District did Bruce’s counsel ever serve the District’s counsel by e-mail. Indeed, a review of Bruce’s Board filings in this case prior to the filing of its Response reveals that every Board filing has been served on the District’s counsel by U.S. Mail.² As to Bruce’s assertion that the District e-mailed its non-expert written discovery to Bruce’s counsel, that simply is untrue. Service was made, as all service on Bruce’s counsel has been made in this case, by U.S. Mail. See the District’s Notice and Proof of Service, attached hereto as Exhibit A.

2. In addition to Bruce’s attempted service of her non-expert written discovery being defective because it was served in contravention of both the Hearing Officer’s December 22, 2015 order and applicable Board Procedural Rules governing e-mail service, it should also be noted that at the time of filing of her Response no attempt to serve non-expert written discovery

² The District agreed to accept e-mail service of Bruce’s response to the District’s pending motion to quash service as an accommodation to Bruce’s counsel and in view of the short time allowed under the Hearing Officer’s order of February 26, 2016 in which to file its reply.

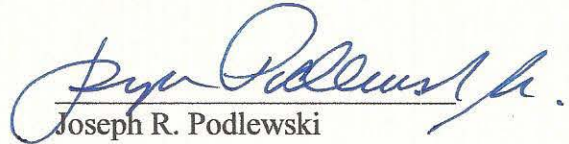
District was ever made by an attorney of record for Bruce. At the time of the attempted e-mail service at issue, the only attorney that had filed an appearance for Bruce in this case was Huck Bouma. However, no discovery was served on the District by Huck Bouma. The attempted e-mail service of the non-expert written discovery on the District was made by Aronberg Goldgehn, but that service was attempted a week *before* Aronberg Goldgehn formally appeared as counsel for Bruce. In short, the attempted e-mail service at issue was made by a law firm that had not filed an appearance for Bruce and therefore did not represent her at the time. The only law firm that had an appearance of record at the time of the attempted service never served any written discovery on the District.

3. Bruce had more than seven weeks in which to prepare and file her non-expert written discovery in this case. When she did attempt service, it was not only late and improper but also made by a law firm that had not appeared and therefore did not represent her. Her only lawyers of record timely filed no discovery. Under the circumstances, Bruce should be barred from filing any non-expert written discovery in this matter. However, should the hearing officer grant leave to Bruce to properly re-serve non-expert written discovery, the time for the District to answer should begin to run when that written discovery is properly served with leave.³

³ The District notes that on February 29, 2016, Bruce filed a notice with the Board that she re-served her non-expert written discovery on the District. This attempted service, made two weeks after service was have been made under the December 22, 2015 order and without leave of Hearing Officer, is untimely, improper and should be considered a nullity.

WHEREFORE, the District respectfully requests that the hearing officer quash the attempted service of Bruce's non-expert written discovery. The District further requests that the hearing officer find that the attempted service is a nullity and that no non-expert written discovery has been served on the District in this matter.

Respectfully submitted,



Joseph R. Podlewski

Joseph R. Podlewski
Heidi Hanson
Podlewski & Hanson P.C.
4721 Franklin Ave., Suite 1500
Western Springs, Illinois 60558
(708) 784-0624

Dated: March 2, 2016

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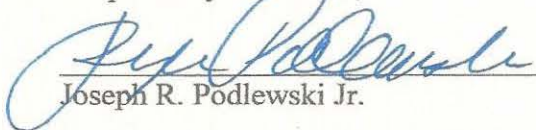
To: Lawrence A. Stein
Huck Bouma PC
1755 South Naperville Road
Wheaton, IL 60189

Lawrence A. Stein
Aronberg Goldgehn Davis & Garmisa
330 N. Wabash Avenue
Suite 1700
Chicago, Illinois 60611

PLEASE TAKE NOTICE that I have today served upon you the following document:

HIGHLAND HILLS SANITARY DISTRICT'S FIRST REQUEST FOR PRODUCTION,
HIGHLAND HILLS SANITARY DISTRICT'S FIRST SET OF INTERROGATORIES, and
HIGHLAND HILLS SANITARY DISTRICT'S FIRST REQUEST TO ADMIT FACTS

Respectfully submitted,


Joseph R. Podlewski Jr.

Dated: February 12, 2016

Joseph R. Podlewski Jr.
Heidi E. Hanson
Podlewski & Hanson P.C.
4721 Franklin Ave, Suite 1500
Western Springs, IL 60558-1720
(708) 784-0624

EXHIBIT A

CERTIFICATE OF SERVICE

I, the undersigned attorney, certify that I have served on the date of February 12, 2016 the attached:

HIGHLAND HILLS SANITARY DISTRICT'S FIRST REQUEST FOR PRODUCTION,
HIGHLAND HILLS SANITARY DISTRICT'S FIRST SET OF INTERROGATORIES, and
HIGHLAND HILLS SANITARY DISTRICT'S FIRST REQUEST TO ADMIT FACTS

Upon the following persons, by depositing same in the U. S. Postal Service mailbox at Western Springs, Illinois before 4:30 this day, February 12, 2016 with proper postage prepaid, upon the following persons:

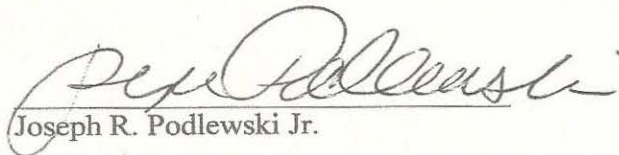
One copy to:

Lawrence A. Stein
Huck Bouma PC
1755 South Naperville Road
Wheaton, IL 60189

And one copy to

Lawrence A. Stein
Aronberg Goldgehn Davis & Garmisa
330 N. Wabash Avenue
Suite 1700
Chicago, Illinois 60611

Dated: February 12, 2016



Joseph R. Podlewski Jr.

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I, the undersigned attorney, certify that I have served on the date of March 2, 2016 the attached:

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Upon the following persons, by electronic filing before 4:30 this day:

Clerk's Office On-Line
Illinois Pollution Control Board
100 West Randolph Street
James R. Thompson Center, Suite 11-500
Chicago, Illinois 60601-3218

And by depositing same in the U. S. Postal Service mailbox at Western Springs, Illinois before
4:30 this day, with proper postage prepaid, upon the following persons:

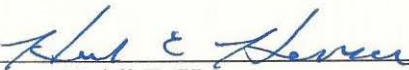
One copy to:

Lawrence A. Stein
Aronberg Goldgehn Davis & Garmisa
330 N. Wabash Avenue
Suite 1700
Chicago, Illinois 60611

And pursuant to 35 Ill Adm. Code 101.1060(d), before 4:30 this day I served by email
transmission eight (8) pages (including this Certificate) upon

Bradley Halloran, Hearing Officer at the email address of Brad.Halloran@illinois.gov.
My email address is heh70@hotmail.com.

Dated: March 2, 2016


Heidi E. Hanson

Joseph R. Podlewski Jr.
Heidi E. Hanson
Podlewski & Hanson P.C.
4721 Franklin Ave, Suite 1500
Western Springs, IL 60558-1720
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