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OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

STATE OF ILLINOIS  
Pollution Control Board

**Lisa Madigan**  
ATTORNEY GENERAL

February 17, 2004

The Honorable Dorothy Gunn  
Illinois Pollution Control Board  
James R. Thompson Center, Ste. 11-500  
100 West Randolph  
Chicago, Illinois 60601

Re: ***People v. Emmett Utilities and Russell D. Thorell***  
**PCB No. 04-81**

Dear Clerk Gunn:

Enclosed for filing please find the original and ten copies of a NOTICE OF FILING, COMPLAINANT'S MOTION TO STRIKE THORELL'S MOTION TO DISMISS, COMPLAINANT'S MOTION TO STRIKE EMMETT UTILITIES, INC.'S ANSWER and COMPLAINANT'S OBJECTION TO MOTION FOR STAY OF PROCEEDINGS BY RESPONDENTS RUSSELL D. THORELL AND EMMETT UTILITIES, INC. in regard to the above-captioned matter. Please file the originals and return file-stamped copies of the documents to our office in the enclosed self-addressed, stamped envelope.

Thank you for your cooperation and consideration.

Very truly yours,

  
Thomas Davis, Chief  
Environmental Bureau  
500 South Second Street  
Springfield, Illinois 62706  
(217) 782-9031

TD/pp  
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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FEB 20 2004

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF )  
ILLINOIS, )  
 )  
Complainant, )  
 )  
vs. )  
 )  
EMMETT UTILITIES, INC., an Illinois )  
corporation, and RUSSELL D. )  
THORELL, individually and as )  
president of EMMETT UTILITIES, INC., )  
 )  
Respondent. )

PCB NO. 04-81  
(Enforcement)

NOTICE OF FILING

To: Mr. John Meyers  
Rabin, Myers & Hanken, P.C.  
1300 South Eighth Street  
Springfield, IL 62703

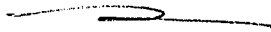
PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, COMPLAINANT'S MOTION TO STRIKE THORELL'S MOTION TO DISMISS, COMPLAINANT'S MOTION TO STRIKE EMMETT UTILITIES, INC.'S ANSWER and COMPLAINANT'S OBJECTION TO MOTION FOR STAY OF PROCEEDINGS BY RESPONDENTS RUSSELL D. THORELL AND EMMETT UTILITIES, INC. , a copy of which is attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,  
Attorney General of the  
State of Illinois

MATTHEW J. DUNN, Chief  
Environmental Enforcement/Asbestos  
Litigation Division

BY:   
THOMAS DAVIS, Chief  
Assistant Attorney General  
Environmental Bureau

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: February 17, 2004

## CERTIFICATE OF SERVICE

I hereby certify that I did on February 17, 2004, send by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING, COMPLAINANT'S MOTION TO STRIKE THORELL'S MOTION TO DISMISS, COMPLAINANT'S MOTION TO STRIKE EMMETT UTILITIES, INC.'S ANSWER and COMPLAINANT'S OBJECTION TO MOTION FOR STAY OF PROCEEDINGS BY RESPONDENTS RUSSELL D. THORELL AND EMMETT UTILITIES, INC.

To: Mr. John Meyers  
Rabin, Myers & Hanken, P.C.  
1300 South Eighth Street  
Springfield, IL 62703

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

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

A copy was also sent to:

Carol Sudman  
Hearing Officer  
Illinois Pollution Control Board  
1021 N. Grand Avenue East  
Springfield, IL 62794

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Thomas Davis, Chief  
Assistant Attorney General

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STATE OF ILLINOIS  
Pollution Control Board

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
v. )  
)  
EMMETT UTILITIES, INC., )  
an Illinois corporation, and )  
RUSSELL D. THORELL, individually and )  
as president of EMMETT UTILITIES, INC. )  
)  
Respondents. )

PCB NO. 04- 81  
(Enforcement)

**COMPLAINANT'S MOTION TO STRIKE THORELL'S MOTION TO DISMISS**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, hereby respectfully moves to strike, pursuant to Section 101.506 of the Board's Procedural Rules, 35 Ill. Adm. Code 101.506, the Motion to Dismiss filed by Respondent RUSSELL D. THORELL. Complainant states as follows:

1. The Complaint against EMMETT UTILITIES, INC., an Illinois corporation, and RUSSELL D. THORELL, individually and as president of EMMETT UTILITIES, INC., was filed with the Board on November 10, 2003. The Complaint was served upon both Respondents by certified mail on November 8, 2003, along with the notice required by Section 103.204(f), to wit: "Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney."
2. Prior to filing the Complaint, by a letter dated October 10, 2003, the Attorney General's Office contacted Attorney John Myers, who represents RUSSELL D. THORELL and

EMMETT UTILITIES, INC., in a circuit court action pending appeal, to determine whether Attorney Myers would represent these clients in this matter. A copy of the draft Complaint was provided to counsel, who acknowledged such in a reply dated October 13, 2003. Subsequent to the filing of the Complaint, the Attorney General's Office contacted Attorney Myers to determine whether he would represent his clients in this matter and, if not, to obtain a telephone number for the upcoming status conference with the Hearing Officer.

3. The efforts of the Attorney General's Office demonstrate not only formal compliance with notification requirements but also informal communications with counsel. In this context, both corporate and individual Respondents were fully aware of the enforcement proceeding; their counsel was even advised that litigation would be pursued prior to the formal filing of the Complaint.

4. The Motion to Dismiss filed by Respondent RUSSELL D. THORELL was served upon the Attorney General's Office on February 11, 2004, approximately 90 days after the filing of the Complaint. Section 101.506 requires that a motion to dismiss be filed within 30 days of the filing of a complaint "unless the Board determines that material prejudice would result." Not only is the motion untimely, but Respondent RUSSELL D. THORELL failed to seek leave to file such motion and/or to allege in what manner material prejudice might result. By failing to plead this allegation, and to even acknowledge the untimeliness of his motion, Respondent RUSSELL D. THORELL has waived his ability to attempt to demonstrate material prejudice. The Board has no basis in the record to entertain consideration of whether any prejudice might result and, if so, whether such potential prejudice might be deemed material.

5. In the event that the Board were to somehow deny this Motion to Strike, despite the mandatory nature of its Procedural Rule, Complainant requests leave to object to the Motion to Dismiss on substantive grounds.

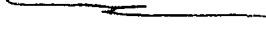
WHEREFORE, Complainant respectfully asks that the Motion to Dismiss be stricken as untimely and thereby denied.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN  
Attorney General  
State of Illinois

MATTHEW J. DUNN, Chief  
Environmental Enforcement Division

BY:   
THOMAS DAVIS, Chief  
Environmental Bureau  
Assistant Attorney General

500 South Second Street  
Springfield, Illinois 62706  
Dated: February 17, 2004

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS, )  
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 Complainant, )  
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 v. )  
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 EMMETT UTILITIES, INC., )  
 an Illinois corporation, and )  
 RUSSELL D. THORELL, individually and )  
 as president of EMMETT UTILITIES, INC. )  
 )  
 Respondents. )

PCB NO. 04- 81  
(Enforcement)

**COMPLAINANT'S MOTION TO STRIKE EMMETT UTILITIES, INC.'S ANSWER**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, hereby respectfully moves to strike, pursuant to Section 101.506 of the Board's Procedural Rules, 35 Ill. Adm. Code 101.506, the Answer filed by Respondent EMMETT UTILITIES, INC.. Complainant states as follows:

1. The Complaint against EMMETT UTILITIES, INC., an Illinois corporation, and RUSSELL D. THORELL, individually and as president of EMMETT UTILITIES, INC., was filed with the Board on November 10, 2003. The Complaint was served upon both Respondents by certified mail on November 8, 2003, along with the notice required by Section 103.204(f), to wit: "Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney."

2. Prior to filing the Complaint, by a letter dated October 10, 2003, the Attorney General's Office contacted Attorney John Myers, who represents RUSSELL D. THORELL and EMMETT UTILITIES, INC., in a circuit court action pending appeal, to determine whether Attorney Myers would represent these clients in this matter. A copy of the draft Complaint was provided to counsel, who acknowledged such in a reply dated October 13, 2003. Subsequent to the filing of the Complaint, the Attorney General's Office contacted Attorney Myers to determine whether he would represent his clients in this matter and, if not, to obtain a telephone number for the upcoming status conference with the Hearing Officer.

3. The efforts of the Attorney General's Office demonstrate not only formal compliance with notification requirements but also informal communications with counsel. In this context, both corporate and individual Respondents were fully aware of the enforcement proceeding; their counsel was even advised that litigation would be pursued prior to the formal filing of the Complaint.

4. The Answer filed by Respondent EMMETT UTILITIES, INC., was served upon the Attorney General's Office on February 11, 2004, approximately 90 days after the filing of the Complaint. Section 103.204(d) of the Board's Procedural Rules, 35 Ill. Adm. Code 103.204(d), requires that an answer be filed within 60 days of the filing of a complaint and that all material allegations will be taken as admitted if no answer is filed.

5. Complainant has filed a Motion for Summary Judgment against Respondent EMMETT UTILITIES, INC., on the grounds that, absent a timely answer, all material allegations must be taken as admitted.



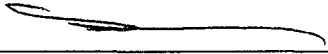
WHEREFORE, Complainant respectfully asks that the Answer be stricken as untimely.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN  
Attorney General  
State of Illinois

MATTHEW J. DUNN, Chief  
Environmental Enforcement Division

BY:   
THOMAS DAVIS, Chief  
Environmental Bureau  
Assistant Attorney General

500 South Second Street  
Springfield, Illinois 62706  
Dated: February 17, 2004

FEB 20 2004

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS, )  
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 Complainant, )  
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 v. )  
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 EMMETT UTILITIES, INC., )  
 an Illinois corporation, and )  
 RUSSELL D. THORELL, individually and )  
 as president of EMMETT UTILITIES, INC. )  
 )  
 Respondents. )

PCB NO. 04- 81  
(Enforcement)

**COMPLAINANT'S OBJECTION TO MOTION FOR STAY OF PROCEEDINGS BY  
RESPONDENTS RUSSELL D. THORELL AND EMMETT UTILITIES, INC.**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney  
General of the State of Illinois, hereby respectfully objects to the Motion for Stay of Proceedings  
filed by the Respondents, and states as follows:

1. Section 101.514 of the Board's Procedural Rules, 35 Ill. Adm. Code 101.514,  
requires that a motion to stay be supported by "sufficient information detailing why a stay is  
needed."

2. Respondents' Motion for Stay of Proceedings is accompanied by documents  
which may be considered to provide information regarding the financial status of the corporate  
Respondent and the circuit court judgment against it. None of this information pertains to why a  
stay might be necessary. The sole premise of the motion is the erroneous contention that the  
enforcement proceeding before the Board would "become moot" in the event that the Illinois  
Commerce Commission allows the Petition to Discontinue or Abandon Service. Complainant's  
action seeks the imposition of civil penalties and other relief for past violations and such claims  
would not be rendered moot.

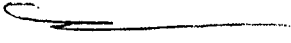
WHEREFORE, Complainant respectfully asks that the Motion for Stay of Proceedings be denied.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN  
Attorney General  
State of Illinois

MATTHEW J. DUNN, Chief  
Environmental Enforcement Division

BY:   
THOMAS DAVIS, Chief  
Environmental Bureau  
Assistant Attorney General

500 South Second Street  
Springfield, Illinois 62706  
Dated: February 17, 2004