

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
by LISA MADIGAN, Attorney)	
General of the State of Illinois,)	
)	
Complainant,)	
)	
v.)	PCB No. 05-51
)	
ENVIRONMENTAL HEALTH &)	(Enforcement - Air)
SAFETY, SERVICES, INC., an Illinois)	
Corporation,)	
)	
Respondent.)	

MOTION TO DEEM FACTS ADMITTED

Now comes the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and pursuant to Section 101.618 of the Board's Procedural Rules, 35 Ill. Adm. Code 101.618, hereby moves for the entry of an order deeming all facts in Complainant's Request for Admission of Facts as admitted against Respondent, ENVIRONMENTAL HEALTH & SAFETY, SERVICES, INC. Pursuant to Section 101.502(a) of the Board's Procedural Rules, 35 Ill. Adm. Code 101.502(a), this motion is directed to the hearing officer.

I. Applicable Legal Standard

1. Section 101.618(f) of the Board's Procedural Rules, 35 Ill. Adm. Code 101.618(f) (emphasis added), provides as follows:

- f) Admission in the Absence of Denial. Each of the matters of fact and the genuineness of each document of which admission is requested is admitted unless, within 28 days after service thereof, *the party* to whom the request is directed serves upon the party requesting the admission either a *sworn statement* denying specifically the matters of which admission is requested or setting forth in detail the reasons why the party cannot truthfully admit or deny those matters, or written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in

part. If written objections to a part of the request are made, the remainder of the request must be answered within the period designated in the request. A denial must fairly address the substance of the requested admission.

2. Section 101.300 of the Board's Procedural Rules, 35 Ill. Adm. Code 101.300, provides, in pertinent part, as follows:

a) Computation of Time. Computation of any period of time prescribed in the Act, other applicable law, or these rules will begin with the first calendar day following the day on which the act, event or development occurs and will run until the close of business on the last day, or the next business day if the last day is a Saturday, Sunday or national or State legal holiday.

* * * *

c) Time of Service. . . . In the case of service by U.S. Mail, service is presumed complete four days after mailing. The presumption can be rebutted by proper proof.

II. Grounds for Deeming Admitted the Facts in Complainant's Request for Admission of Facts

1. On December 6, 2004, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, filed its First Amended Complaint against Respondent, ENVIRONMENTAL HEALTH & SAFETY, SERVICES, INC. ("EH&S"). Complainant alleged violations of Sections 9(a) and 9.1(d) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/9(a) and 9.1(d) (2004), Section 201.141 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.141, and Sections 61.145(b)(1), (b)(3)(iv), (b)(4)(vi), (c)(3), and (c)(6)(i), and 61.150(a)(1) and (b)(1) of the U.S. EPA's NESHAPs, 40 C.F.R. 61.145(b)(1), (b)(3)(iv), (b)(4)(vi), (c)(3), and (c)(6)(i) and 61.150(a)(1) and (b)(1).

2. On December 19, 2005, Complainant served its First Request for Admission of Facts on Respondent, EH&S, via first-class mail.

3. On January 17, 2006, EH&S served on Complainant a Response to Complainant's Request for Admission, which was signed only by Respondent's attorney, and not by Respondent. A copy of EH&S' Response to Complainant's Request for Admission of Facts is attached to this Motion as Exhibit A.

4. Pursuant to Section 101.300 of the Board's Procedural Rules, 35 Ill. Adm. Code 101.300, EH&S' Response to Complainant's First Request for Admission of Facts was due on or before January 23, 2006.

5. By failing to serve upon the Complainant a sworn statement of EH&S, the party to whom it was directed, denying the matters of fact contained in Complainant's First Request for Admission of Facts by January 23, 2006, as required by Section 101.618 of the Board's Procedural Rules, 35 Ill. Adm. Code 101.618, Respondent has admitted each of the matters of fact contained in Complainant's First Request for Admission of Facts.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the hearing officer enter an order:

A. Finding that pursuant to Section 101.618 of the Board's Procedural Rules, 35 Ill. Adm. Code 101.618, Respondent has admitted all facts contained in Complainant's Request for Admission of Facts; and

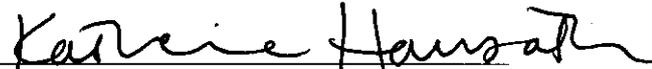
B. Ordering such other and further relief as is appropriate under the circumstances.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
by LISA MADIGAN
Attorney General of the State of Illinois

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

ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

BY: 

KATHERINE M. HAUSRATH
Assistant Attorney General
Environmental Bureau North
188 West Randolph St., 20th Floor
Chicago, Illinois 60601
312-814-0660

EXHIBIT A

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
LISA MADIGAN, Attorney General of)	
the State of Illinois,)	
)	
Complainant,)	
)	
vs)	PCB No. 05-51
)	(Enforcement-Air)
ENVIRONMENTAL HEALTH AND SAFETY)	
SERVICES, INC., an Illinois corporation)	
)	
Respondent.)	

RESPONSE TO REQUEST FOR ADMISSION OF FACTS

NOW COMES the Respondent, ENVIRONMENTAL HEALTH AND SAFETY SERVICES, INC., an Illinois corporation, by its attorneys, SCHLUETER ECKLUND and for its response to Complainant's Request for Admission of Facts states as follows:

1. Respondent admits Fact No. 1.
2. Respondent admits Fact No. 2.
3. Respondent admits Fact No. 3.
4. Respondent denies Fact No. 4.
5. Respondent denies Fact No. 5.
6. Respondent denies Fact No. 6.
7. Respondent denies Fact No. 7.
8. Respondent admits Fact No. 8.
9. Respondent admits a notification was sent but currently is unsure of the date

and therefore denies the remaining facts stated.

10. Respondent states that the notification speaks for itself.
11. Respondent states that the notification speaks for itself.
12. Respondent states that the notification speaks for itself.
13. Respondent states that the notification speaks for itself.
14. Respondent states that the notification speaks for itself.
15. Respondent denies Fact No. 15.
16. Respondent denies Fact No. 16.
17. Respondent admits Fact No. 17.
18. Respondent states that the notification speaks for itself.
19. Respondent states that the notification speaks for itself.
20. Respondent states that the notification speaks for itself.
21. Respondent states that the notification speaks for itself.
22. Respondent has insufficient knowledge to form an opinion, therefore denies

the same.

23. Respondent denies Fact No. 23.
24. Respondent denies Fact No. 24.
25. Respondent denies Fact No. 25.
26. Respondent denies Fact No. 26.
27. Respondent denies Fact No. 27.
28. Respondent denies Fact No. 28.
29. Respondent denies Fact No. 29.
30. Respondent denies Fact No. 30.

31. Respondent denies Fact No. 31.
32. Respondent denies Fact No. 32.
33. Respondent denies as the temperatures were below freezing.
34. Respondent has insufficient information to form a belief as to the statement made in Fact No. 34 and therefore denies the same.
35. Respondent has insufficient information to form a belief as to the statement made in Fact No. 35 and therefore denies the same.
36. Respondent denies Fact No. 36.
37. Respondent denies Fact No. 37.
38. Respondent has insufficient information therefore denies the same.
39. Respondent denies Fact No. 39.
40. Respondent has insufficient information to form a belief as to the statement made in Fact No. 40 and therefore denies the same.
41. Respondent has insufficient information to form a belief as to the statement made in Fact No. 41 and therefore denies the same.
42. Respondent denies Fact No. 42.
43. Respondent denies Fact No. 43.
44. Respondent denies Fact No. 44.
45. Respondent denies Fact No. 45.
46. Respondent denies Fact No. 46.
47. Respondent denies Fact No. 47.
48. Respondent denies Fact No. 48.

Respectfully submitted,
ENVIRONMENTAL HEALTH AND SAFETY
SERVICES, INC., an Illinois corporation, Respondent

By: SCHLUETER ECKLUND



BRYAN G. SELANDER, One of its attorneys

DATE: January 17, 2006

Bryan G. Selander #316
SCHLUETER ECKLUND
4023 Charles Street
Rockford, IL 61108
(815) 229-5333

CERTIFICATE OF SERVICE

I, BRYAN G. SELANDER, Attorney for Respondent, do certify that I caused to be mailed this 17th day of January, 2006, the foregoing RESPONSES TO ADMISSION OF FACTS to the persons listed on the said NOTICE by first-class mail in a postage prepaid envelope and depositing same with the United States Postal Service located at 5225 Harrison Avenue, Rockford, IL 61125.

It is hereby certified that a true copy of the foregoing Notice was electronically filed with the following on January 17, 2006:

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

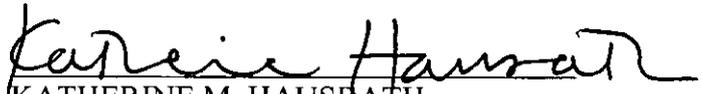

BRYAN G. SELANDER
Attorney for Respondent
Schlueter Ecklund
4023 Charles Street
Rockford, IL 61108
(815) 229-5333

CERTIFICATE OF SERVICE

I, KATHERINE M. HAUSRATH, an Assistant Attorney General, do certify that I caused to be mailed this 31 day of January, 2006, the foregoing MOTION TO DEEM FACTS ADMITTED to the persons listed on the said NOTICE by first-class mail in a postage prepaid envelope and depositing same with the United States Postal Service located at 188 West Randolph Street, Chicago, Illinois, 60601.

It is hereby certified that a true copy of the foregoing Notice was electronically filed with the following on January 31, 2006:

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


KATHERINE M. HAUSRATH
Assistant Attorney General
Environmental Bureau
188 West Randolph, 20th Floor
Chicago, IL 60601
312-814-0660