

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 &)
SAFETY, SERVICES, INC., an Illinois)
corporation,)

(Enforcement - Air)

Respondent.)

RESPONSE TO RESPONDENT'S MOTION FOR EXTENSION OF TIME

Now comes the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and pursuant to Section 101.500(d) of the Illinois Pollution Control Board's ("Board") Procedural Rules, 35 Ill. Adm. Code 101.500(d), hereby responds and objects to Respondent's, ENVIRONMENTAL HEALTH & SAFETY, SERVICES, INC. ("EH&S"), Motion for Extension of Time to File an Amended Response to Request for Admission of Fact ("Motion for Extension of Time").

I. Applicable Legal Standard

1. Section 101.522 of the Board's Procedural Rules, 35 Ill. Adm. Code 101.522 (emphasis added), provides as follows:

The Board or hearing officer, for *good cause* shown on a motion after notice to the opposite party, may extend the time for filing any document or doing any act which is required by these rules to be done within a limited period, either before or after the expiration of time.

2. Leave to file a sworn response to a Supreme Court Rule 216¹ Request for Admission of Facts once the twenty-eight day limit has expired should not be granted without a showing of good cause. Bright v. Dicke, 166 Ill.2d 204, 205, 652 N.E.2d 275, 275 (1995). "Inadvertence" or mistake by the attorney is not sufficient to establish "good cause" for an extension of time under Supreme Court Rule 183.² Greene v. City of Chicago, 73 Ill.2d 100, 108, 382 N.E.2d 1205, 1209 (1978). Also, the "mere absence of inconvenience or prejudice to the opposing party" does not satisfy the "good cause" requirement of Supreme Court Rule 183. Bright, 166.Ill.2d at 209, 652 N.E.2d at 277.

II. Grounds for Denying Respondent's Motion for Extension of Time

1. On December 19, 2005, Complainant served a Request for Admission of Facts ("RFA") on EH&S, via first-class mail. EH&S' Response to Complainant's RFA was due on or before January 23, 2006.

2. On January 17, 2006, EH&S served on Complainant a Response to Complainant's RFA, which was signed only by Respondent's attorney, and not by EH&S. Responses to a request for admission of facts that are signed and verified by the lawyer and not the party do not satisfy the requirement of a sworn statement denying the request. Moy v. Ng, 341 Ill.App.3d 984, 991, 793 N.E.2d 919, 926 (1st Dist. 2003).

3. Complainant did not receive EH&S' sworn Amended Response to the RFA until March 9, 2006; it was filed on March 3, 2006.

4. EH&S has not stated "good cause" for its failure to file the sworn responses to Complainant's RFA within twenty-eight days. In a correspondence dated

¹ Both Supreme Court Rule 216(c) and Section 101.618(f) of the Board's Procedural Rules deem a fact admitted if a sworn denial is not served within twenty-eight days of service of the requests.

² The wording of Supreme Court Rule 183 and Section 101.522 of the Board's Procedural Rules regarding the extension of time for filing is virtually identical.

February 9, 2006, Respondent's attorney apologized for the "oversight," but did not give a reason for its failure to file the sworn responses on or before January 23, 2006.

5. In Respondent's Motion for Extension of Time, Respondent states that the principal officer of EH&S was out of town for much of February. Respondent's Motion for Extension of Time, ¶ 2. This fact does not constitute good cause for EH&S' failure to file a sworn response on or before January 23, 2006.

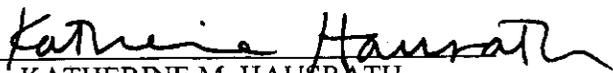
WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the hearing officer enter an order denying Respondent's Motion for Extension of Time because Respondent has not shown "good cause" for its failure to file sworn responses to Complainants RFA within twenty-eight days.

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

CERTIFICATE OF SERVICE

I, KATHERINE M. HAUSRATH, an Assistant Attorney General, do certify that I caused to be mailed this 15 day of March, 2006, the foregoing RESPONSE TO MOTION FOR EXTENSION OF TIME TO FILE AN AMENDED RESPONSE TO REQUEST FOR ADMISSION OF FACTS by first-class mail in a postage prepaid envelope to Mr. Halloran and by certified mail to Mr. Selander, 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 March 15, 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

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

Caterpillar Logistics, Inc.,)	
)	
Petitioner,)	
)	
v.)	PCB No. _____
)	
Illinois Environmental Protection Agency,)	Permit Appeal – Air
)	
Respondent.)	

NOTICE OF FILING

TO: Ms. Dorothy M. Gunn
Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601
(VIA ELECTRONIC FILING)

(PERSONS ON ATTACHED SERVICE LIST)

PLEASE TAKE NOTICE that on March 14, 2006, I filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing Caterpillar Logistics, Inc.'s PETITION FOR REVIEW and ENTRY OF APPEARANCE OF PATRICIA F. SHARKEY, copies of which are hereby served upon you.

Dated: March 14, 2006

Respectfully submitted,

Caterpillar Logistics, Inc.

By: /s/ Patricia F. Sharkey _____
One of its Attorneys

Patricia F. Sharkey
Mayer, Brown, Rowe & Maw LLP
71 South Wacker Drive
Chicago, Illinois 60606-4637
(312) 782-0600

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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Illinois Environmental Protection Agency,)	Permit Appeal – Air
)	
Respondent.)	

ENTRY OF APPEARANCE OF PATRICIA F. SHARKEY

NOW COMES PATRICIA F. SHARKEY, and hereby enters her appearance in this matter on behalf of Caterpillar Logistics, Inc.

Dated: March 14, 2006

Respectfully submitted,
Caterpillar Logistics, Inc.

By: /s/ Patricia F. Sharkey
One of its Attorneys

Patricia F. Sharkey
Mayer, Brown, Rowe & Maw LLP
71 South Wacker Drive
Chicago, Illinois 60606-4637
(312) 782-0600

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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PETITION FOR REVIEW

NOW COMES Caterpillar Logistics, Inc. (“Caterpillar”), by its attorney, Mayer, Brown, Rowe & Maw LLP, and petitions for review of Operating Permit No.730900071 issued by the Division of Air Pollution Control of the Illinois Environmental Protection Agency (“Illinois EPA”) on February 7, 2006.

In support thereof, Petitioner states:

1. On December 22, 2005, Caterpillar filed an application to amend its March 23, 2003 Operating Permit No. 730900071 to clarify two points related to the coating line.
2. On February 7, 2006, the Illinois EPA Division of Air Pollution Control issued a revised Operating Permit No. 730900071 which included the clarifications, but also deleted any reference to an emergency diesel generator which was authorized to operate under the March 26, 2003 permit.
3. Caterpillar believes the emergency diesel generator was deleted in error. We believe this error may have been due to the fact that the Illinois EPA used a 2001 version of the permit, rather than the more recent 2003 permit, to reprint the existing permit terms in the February 7, 2006 permit revision.

4. Caterpillar has filed a request for an administrative permit revision to correct this error and has no reason to believe the permit won't be revised as requested. However, in order to preserve its right to continue to operate the emergency generator, as needed, until such time as a revised operating permit can be issued, Caterpillar is required to appeal the deletion of the emergency generator permit conditions as they existed in the March 26, 2003 permit.

5. A copy of the February 7, 2006 permit with the emergency generator terms re-inserted and shown in underscoring is attached hereto as Attachment A.

WHEREFORE, Caterpillar petitions the Board for a hearing and determination reversing the Illinois EPA's deletion of the above referenced emergency diesel generator conditions from Operating Permit No. 73090071 as issued on February 7, 2006.

Dated: March 14, 2006

Respectfully submitted,

Caterpillar Logistics, Inc.

By: /s/ Patricia F. Sharkey
One of its Attorneys

Patricia F. Sharkey
Mayer, Brown, Rowe & Maw LLP
71 South Wacker Drive
Chicago, Illinois 60606-4637
(312) 782-0600

ATTACHMENT A

OPERATING PERMIT

PERMITTEE

Caterpillar, Inc.
Attn: Michael Montgomery
100 North-East Adams Street
Peoria, Illinois 61602

Application No.: 73090071

ID. No.: 179050AAA

Applicant's Designation:

Date Received: December 22, 2005

Subject: Boilers and Painting Line

Date Issued: February 7, 2006

Expiration Date: February 7, 2007

Location: 500 North Morton Avenue, Morton

Permit is hereby granted to the above-designated Permittee to OPERATE emission unit(s) and/or air pollution control equipment consisting of two natural gas-fired boilers, one coating line, and one emergency diesel generator pursuant to the above-referenced application. This Permit is subject to standard conditions attached hereto and the following special condition(s):

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- 1a. This permit shall expire 180 days after the Illinois EPA sends a written request for the renewal of this permit.
- b. This permit shall terminate if it is withdrawn or is superseded by a revised permit.
- 2a. The two boilers are subject to New Source Performance Standards (NSPS) for small Industrial-Commercial-Institutional Steam Generating Units, 40 CFR 60, Subparts A and Dc. The Illinois EPA is administering these standards in Illinois on behalf of the United States EPA under a delegation agreement.
- b. The Permittee shall fulfill applicable reporting and recordkeeping requirements of 40 CFR 60.48(c).
- c. At all times the Permittee shall, to the extent practicable, maintain and operate the boiler, including associated air pollution control equipment, in a manner consistent with good air pollution control practice for minimizing emissions.
3. Operation and emissions of two boilers (combined) shall not exceed the following limits:

Natural Gas Usage: 20 mmscf/month, 220 mmscf/year

Pollutant	Emission Factor	Emissions	
	(Lbs/mmscf)	(Tons/Mo)	(Tons/Yr)
Nitrogen Oxides (NOx)	100	1.0	11.0
Carbon Monoxide (CO)	84	0.8	9.2
Particulate Matter (PM)	7.6	0.1	0.8
Volatile Organic Material (VOM)	5.5	0.1	0.6

These limits are based on the maximum boilers operations and standard emission factors given by AP-42. Compliance with annual limits shall be determined on a monthly basis from a running total of 12 months of data.

4. The coating line is subject to and shall comply with the volatile organic materials (VOM) emission limitations of 35 Ill. Adm. Code Part 215, Subpart F: Coating Operations. Compliance with the requirements of this subpart is achieved through the use of compliance coating pursuant to 35 Ill. Adm. Code 215.204(j)(2), (3) and (k)(2). The VOM content of the coatings, as applied, shall not exceed 3.5 lbs./gallon excluding water and any compounds which are specifically exempted from the definition of VOM for 215.204(j)(2) and (3) and 4.3 lbs/gallon for 215.204(k)(2) – extreme performance top coat coating.

5. Operation and emissions of the diesel emergency generator shall not exceed the following limits:

Operating Hours: 500 hours/month and 500 hours/year

Pollutant	Emission Factor	Emissions	
	(Lbs/hp-Hr)	(Tons/Mo)	(Tons/Yr)
<u>Nitrogen Oxides (NOx)</u>	<u>0.024</u>	<u>15.2</u>	<u>15.2</u>
<u>Carbon Monoxide (CO)</u>	<u>0.0055</u>	<u>3.5</u>	<u>3.5</u>
<u>Sulfur Dioxide (SO₂)</u>	<u>0.0040</u>	<u>2.5</u>	<u>2.5</u>
<u>Particulate Matter (PM)</u>	<u>0.0007</u>	<u>0.4</u>	<u>0.4</u>
<u>Volatile Organic Material (VOM)</u>	<u>0.0007</u>	<u>0.4</u>	<u>0.4</u>

These limits are based on the maximum engine operation rate, sulfur content of the fuel less than 0.5% and standard emission factors (AP-42, Table 3.4-1). Compliance with annual limits shall be determined on a monthly basis from a running total of 12 months of data.

6. The emissions of HAPs as listed in Section 112(b) of the Clean Air Act shall not equal or exceed 10 tons per year of any single HAP or 25 tons per year of any combination of such HAPs, or such lesser quantity as USEPA may establish by rule

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which would require the Permittee to obtain a Clean Air Act Permit Program permit from the Illinois EPA. As a result of this condition, this permit is issued based on the emissions of any HAP from this source not triggering the requirement to obtain a Clean Air Act Permit Program permit from the Illinois EPA.

7. The VOM emissions from coating and clean-up operations shall not exceed 6.7 tons/month and 72.0 tons/year.

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The emissions of VOM and HAP shall be determined from the following equation:

$$E = \sum(S_i \times C_i)$$

Where:

- E – VOM/HAP emissions (ton);
- S_i – individual coating, thinner and clean-up solvent usage (ton);
- C_i – VOM content of the individual coating and solvent (weight fraction);

These limits are based on the maximum production rate. Compliance with annual limits shall be determined from a running total of 12 months of data.

8. The Permittee shall maintain monthly records of the following items:

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- a. Names and amounts of coatings and solvents used (gallons/month, gallons/year);
- b. VOM and HAP content of coatings and solvents (lbs/gallon);
- c. VOM and HAP emission calculations (tons/month, tons/year);
- d. VOM compliance calculations (lbs/gallon); and
- e. Emergency generator operating hours (hr/mo, hr/yr).

Deleted: and

9. All records and logs required by this permit shall be retained at a readily accessible location at the source for at least three years from the date of entry and shall be made available for inspection and copying by the Illinois EPA or USEPA upon request. Any records retained in an electronic format (e.g., computer) shall be capable of being retrieved and printed on paper during normal source office hours so as to be able to respond to the Illinois EPA request for records during the course of a source inspection.

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10. If there is an exceedance of the requirements of this permit as determined by the records required by this permit, the Permittee shall submit a report to the Illinois EPA's Compliance Section in Springfield, Illinois within 30 days after the exceedance. The report shall include the emissions released in accordance with the

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recordkeeping requirements, a copy of the relevant records, and a description of the exceedance or violation and efforts to reduce emissions and future occurrences.

11. Two (2) copies of required reports and notifications concerning equipment operation or repairs, performance testing or a continuous monitoring system shall be sent to:

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Illinois Environmental Protection Agency
Division of Air Pollution Control
Compliance Section (#40)
P.O. Box 19276
Springfield, Illinois 62794-9276

and one (1) copy shall be sent to the Illinois EPA's regional office at the following address unless otherwise indicated:

Illinois Environmental Protection Agency
Division of Air Pollution Control
5415 North University
Peoria, Illinois 61614

12. It should be noted that this permit has been revised to revise permit limits.

It also should be noted that during the review of this application it was determined that potential to emit (PTE) of volatile organic materials (VOM) from your facility exceeds major source threshold level of 100 tons per year and your facility is classified as a major source pursuant to Section 39.5(2)(c) of Illinois Environmental Protection Act. You shall apply for a Clean Air Act Permit Program (CAAPP) permit at least six months before the permit expiration date.

To avoid the CAAPP permitting requirements, you may want to consider applying for a Federally Enforceable State Operating Permit (FESOP) if your actual emissions are below the major threshold levels. A FESOP is an operating permit which contains federally enforceable limits in the form of permit conditions which effectively restrict the potential emissions of a source to below major source threshold, thereby excluding the source from the CAAPP.

If you have any questions on this, please call Valeriy Brodsky at 217/782-2113.

Donald E. Sutton, P.E.
Manager, Permit Section
Division of Air Pollution Control

CERTIFICATE OF SERVICE

I, Patricia F. Sharkey, an attorney, hereby certify that I have served Caterpillar Logistics, Inc.'s PETITION FOR REVIEW and ENTRY OF APPEARANCE OF PATRICIA F.

SHARKEY upon:

Ms. Dorothy M. Gunn
Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street
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(Electronic Mail)

Robert A. Messina
Chief Legal Counsel
Division of Legal Counsel
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Donald Sutton
Manager, Permit Section
Division of Air Pollution
Bureau of Air
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276
(U.S. Mail)

as indicated above, by e-mail and/or by depositing said document in the United States Mail, postage prepaid, in Chicago, Illinois on March 14, 2006.

/s/ Patricia F. Sharkey
Patricia F. Sharkey

Patricia F. Sharkey
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(312) 782-0600