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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD CLERK'S OFFICE

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
)
ECONOMY PLATING, INC., an Illinois)
corporation,)
)
Respondent.)

JUN 30 2003

STATE OF ILLINOIS
Pollution Control Board

PCB 97-69
(Enforcement - Air)

NOTICE OF FILING

TO: Mr. Christopher Nowotarski
Stone, Poggrund & Korey
221 North LaSalle Street
32nd Floor
Chicago, Illinois 60601

Bradley P. Halloran
Hearing Officer
Illinois Pollution
Control Board
100 West Randolph St.
Suite 11-500
Chicago, Illinois 60601

PLEASE TAKE NOTICE that I have today filed with the Illinois Pollution Control Board a Motion For Summary Judgment and a Certificate of Service on behalf of the Illinois Environmental Protection Agency, a copy of which is attached and herewith served upon you.

LISA MADIGAN
Attorney General
State of Illinois

BY:



ZEMEHERET BEREKET-AB
Assistant Attorney General
188 West Randolph Street
20th Floor
Chicago, IL 60601
(312) 814-3816

Date: June 30, 2003

THIS FILING IS SUBMITTED ON RECYCLED PAPER

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JUN 30 2003

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
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Complainant,)
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v.) PCB 97-69
) (Enforcement - Air)
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ECONOMY PLATING, INC., an Illinois)
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MOTION FOR SUMMARY JUDGMENT

The Complainant, PEOPLE OF THE STATE OF ILLINOIS, by and through LISA MADIGAN, Attorney General of the State of Illinois, moves the Pollution Control Board ("Board"), for the entry of an order of summary judgment in favor of the Complainant and against the Respondent, ECONOMY PLATING, INC., on Counts I through V of the Second Amended Complaint, pursuant to Section 101.516 of the Board Procedural Rules, 35 Ill. Adm. Code 101.516. In support of its motion, Complainant states as follows:

1. On June 19, 2003, the Board issued the following order: "The Board therefore grants the People's motion to deem facts admitted. Accordingly, the Board deems admitted the material allegations alleged in the second amended complaint and directs the parties to hearing." ("Exhibit A").

2. Section 101.516(b) of the Board Procedural Rules, 35 Ill. Adm. Code 101.516(b), provides as follows:

If the record, including pleadings, depositions and admissions on file, together with any affidavits, shows

that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law, the Board will enter summary judgment. 35 Ill. Adm. Code 101.516(b)

3. Since the Board in its June 19, 2003, Order has found that Respondent, Economy Plating, Inc., has admitted all the material allegations alleged in the second amended complaint, the record shows that there is no genuine issue of material fact remaining for review. Therefore, Complainant is entitled to judgment as a matter of law.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board issue an order in favor of Complainant and against Respondent, ECONOMY PLATING, INC.:

1. Granting an order of summary judgment in favor of Complainant and against the Respondent on Counts I through V of Complainant's Second Amended Complaint;

2. Finding that Respondent violated Sections 9(a), 9(b), and 9.1(d)(1)(2002), and Sections 201.142, 201.143, 201.144 and 201.302 of 35 Ill. Adm. Code 201.142, 201.143, 201.144, and 201.302;

3. Ordering the Respondent to cease and desist from further violations of the Act and Board Air Pollution Regulations cited above;

4. Assessing against the Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and Board Air Pollution Regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) per day for each day

the violation continued;

5. Granting such as other relief as the Board deems appropriate and just.

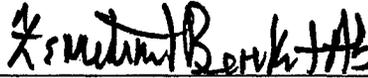
PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement
Asbestos Litigation Division

ROSEMARIE CAZEAU, Chief
ENVIRONMENTAL BUREAU

BY:



ZEMEHERET BEREKET-AB
Assistant Attorney General
Environmental Bureau
188 West Randolph Street, 20th FL
Chicago, Illinois 60601
(312) 814-3816

ILLINOIS POLLUTION CONTROL BOARD

June 19, 2003

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 97-69
) (Enforcement - Air)
ECONOMY PLATING, INC., an Illinois)
corporation,)
)
Respondent.)

ORDER OF THE BOARD (by N.J. Melas):

On May 22, 2003, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a motion to deem facts admitted in this enforcement action (Mot.). For the reasons below, this order grants the People's motion.

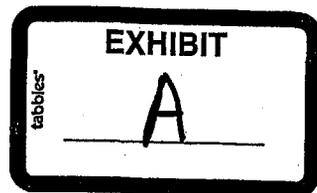
BACKGROUND

On October 10, 1996, the People filed a three-count complaint against Economy Plating, Inc. (Economy). See 415 ILCS 5/31(c)(1) (2002). The People allege that Economy violated Sections 9(a) and (b) of the Environmental Protection Act (Act) and Sections 201.143, 201.302, 201.144, 254.102(c), 254.402, and 301.142 of the Board's air pollution regulations. 415 ILCS 5/9(a) and (b); 35 Ill. Adm. Code 201.143, 201.302, 201.144, 254.102(c), 254.402, and 301.142. The People further alleged that Economy violated these provisions by operating equipment without a permit, constructing a tank and a fume scrubber without a permit, and failing to file annual reports.

The People filed an amended complaint on August 12, 2002, containing a total of five counts and alleging additional violations of Sections 9(b) and 9.1(d)(1) of the Act based on Economy violating federal regulations and certain conditions of its special operating permit. 415 ILCS 5/9(b) and 9.1(d)(1) (2002). Both the complaint and the amended complaint concern Economy's electroplating facility located at 2350 N. Elston Avenue, Chicago, Cook County.

The Board did not accept the People's amended complaint for hearing due to several errors. On November 14, 2002, the People filed a second amended complaint alleging the same violations and correcting all errors.

On November 21, 2003, the Board accepted Economy's amended complaint for hearing. See 35 Ill. Adm. Code 103.212(c). The Board noted that Economy must answer the complaint within 60 days after receiving the complaint, and directed the hearing officer to proceed to hearing. The People filed a motion to deem the facts alleged in the second amended complaint admitted on May 22, 2003. The People did not file a motion for summary judgment on the



violations. Economy did not respond to the People's motion to deem facts admitted, but did file a motion for leave to file an answer, attaching an answer, on June 3, 2003.

THE BOARD'S PROCEDURAL RULES

Section 103.204(d) of the Board's procedural rules for enforcement actions provides in part:

Except as provided in subsection (e) of this Section, the respondent may file an answer within 60 days after receipt of the complaint if respondent wants to deny any allegations in the complaint. All material allegations of the complaint will be taken as admitted if no answer is filed or if not specifically denied by the answer, unless respondent asserts a lack of knowledge sufficient to form a belief. 35 Ill. Adm. Code 103.204(d).

Subsection (e) of Section 103.204 states that the 60-day period to file an answer will be stayed if a respondent timely files a motion attacking the sufficiency of the complaint under Section 101.506 of the Board rules. 35 Ill. Adm. Code 103.202(e); *see also* 35 Ill. Adm. Code 101.506

Section 103.204(f) provides:

Any party serving a complaint upon another party must include the following language in the notice: "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." 35 Ill. Adm. Code 103.204(f).

MOTION TO DEEM FACTS ADMITTED

The People contend that the Board must deem factual allegations in the second amended complaint admitted for two reasons: (1) Economy did not file an answer to the second amended complaint until well after the 60-day deadline; and (2) Economy has not filed a motion staying the 60-day period. Mot. at 4. The People ask the Board to find that Economy has admitted all material allegations asserted in the second amended complaint.

In its June 3, 2003 motion for leave to file an answer, Economy admits that it did receive the People's second amended complaint filed November 14, 2002. Economy claims that it prepared an answer to the complaint but failed to file it. Economy argues the Board should accept the answer because no prejudice will occur to the People.

Both the second amended complaint and the Board's order accepting it for hearing explained the consequences of failing to answer the complaint. 35 Ill. Adm. Code 103.204(f).

CERTIFICATE OF SERVICE

I, ZEMEHERET BEREKET-AB, an Assistant Attorney General, do certify that I caused to be mailed this 30TH Day of June , 2003, the foregoing MOTION FOR SUMMARY JUDGMENT and NOTICE OF FILING by first-class mail in a postage prepaid envelope and depositing same with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.



ZEMEHERET BEREKET-AB

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