

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF)	
ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB No. 07-95
)	(Enforcement)
AET ENVIRONMENTAL, INC., a)	
Colorado corporation, E.O.R. ENERGY,)	
LLC, a Colorado limited liability)	
company,)	
)	
Respondent.)	

NOTICE OF ELECTRONIC FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on August 17, 2010, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, a MOTION TO DEEM FACTS ADMITTED, copies of which are 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: 

Michael D. Mankowski
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031

CERTIFICATE OF SERVICE

I hereby certify that I did on August 17, 2010, cause to be served by certified Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Springfield, Illinois, a true and correct copy of the following instruments entitled NOTICE OF ELECTRONIC FILING and MOTION TO DEEM FACTS ADMITTED upon the persons listed on the Service List.


Michael D. Mankowski
Assistant Attorney General

This filing is submitted on recycled paper.

SERVICE LIST

Lori M. DeVito
AET Environmental, Inc.
14 Lakeside Lane
Denver, CO 80212

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Springfield, IL 62794

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
<u>ex rel.</u> LISA MADIGAN, Attorney General)	
of the State of Illinois,)	
)	
Complainant,)	
)	
v.)	PCB No. 07-95
)	(Enforcement)
AET ENVIRONMENTAL, INC., a Colorado)	
corporation, E.O.R. ENERGY, LLC, a)	
Colorado limited liability company,)	
)	
Respondents.)	

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 to Admit Facts as admitted against Respondent, AET ENVIRONMENTAL, 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 101.400 of the Board's Procedural Rules, 35 Ill. Adm. Code 101.400, provides as follows:

a) Appearances. A person who is a party in a Board adjudicatory proceeding may appear as follows:

* * *

2) When appearing before the Board, any person other than individuals must appear through an attorney-at-law licensed and registered to practice law. (Section 1 of the Corporation Practice of Law Prohibition Act [705 ILCS 220/1] and Section 1 of the Attorney Act [705 ILCS 205/1])

2. 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.

3. 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.

4. Section 1-109 of the Illinois Code of Civil Procedure, 735 ILCS 5/1-109 (2008)

(emphasis added), provides, in pertinent part, as follows:

Verification by certification. Unless otherwise expressly provided by rule of the Supreme Court, whenever in this Code any complaint, petition, answer, *reply*, bill of particulars, answer to interrogatories, affidavit, return or proof of service, or other document or pleading filed in any court of this State is required or permitted to be verified, *or made, sworn to or verified under oath, such requirement or permission is hereby defined to include a certification of such pleading, affidavit or other document under penalty of perjury as provided in this Section.*

Whenever any such pleading, affidavit or other document is so certified, the several matters stated shall be stated positively or upon information and belief only, according to the fact. The person or persons having knowledge of the matters

stated in a pleading, affidavit or other document certified in accordance with this Section shall subscribe to a certification in substantially the following form: *Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.*

* * *

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

5. On March 20, 2007, the PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, filed its Complaint against Respondent, AET ENVIRONMENTAL, INC. ("AET"). Complainant alleged violations of Section 21(e) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/21(e) (2004).

6. On March 19, 2008, the People served a Request to Admit Facts on Respondent, AET, via first-class mail.

7. On April 14, 2008, Lori M. Devito, president of AET, filed an appearance for AET.

8. Lori M. Devito is not an attorney-at-law licensed and registered to practice law.

9. AET is a corporation which must appear through an attorney-at-law licensed and registered to practice law.

10. As a non-attorney, Lori M. Devito is prohibited from representing AET before the Board.

11. On April 14, 2008, no licensed and registered attorney-at-law had filed an appearance for AET.

12. On April 14, 2008, AET was not properly represented before the Board.

13. On April 14, 2008, Lori M. Devito served on the People an Answer to Complainant's Complaint, which was signed by Ms. DeVito. A copy of AET's Answer to Complainant's Complaint is attached to this Motion as Exhibit A.

14. AET's Answer to Complainant's Complaint appears to be a response to the People's Request to Admit Facts.

15. AET's Answer to Complainant's Complaint was merely signed by Lori M.Devito, and did not include a certification statement, as required under Section 1-109 of the Illinois Code of Civil Procedure, 735 ILCS 5/1-109 (2008).

16. AET's Answer to Complainant's Complaint was unsworn.

17. Because Ms. Devito is not a licensed or registered attorney-at-law, her unsworn response does not constitute a valid denial of the People's Request to Admit Facts. See *People v. Strata Geological Services, Inc.*, PCB 06-119, slip opinion at 10 (July 26, 2007).

18. Pursuant to Section 101.300 of the Board's Procedural Rules, 35 Ill. Adm. Code 101.300, AET's Response to Complainant's Request to Admit Facts was due on or before April 20, 2008.

19. No other response to the People's Request to Admit Facts was served upon the People on or before April 20, 2008.

20. By failing to serve upon the People a sworn statement of AET, the party to whom the People's Request to Admit Facts was directed, denying the matters of fact contained in the People's Request to Admit Facts by April 20, 2008, 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. See *Strata Geological Services, Inc.*, PCB 06-119, slip opinion at 10.

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 the People's Request to Admit Facts; and

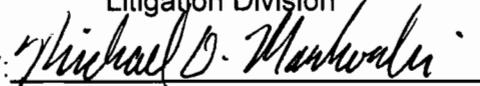
- B. Ordering such other and further relief as is appropriate under the circumstances.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN,
Attorney General of the
State of Illinois

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

BY:



MICHAEL D. MANKOWSKI
Environmental Bureau
Assistant Attorney General

Attorney Reg. No. 6287767
500 South Second Street
Springfield, Illinois 62706
217/557-0586
Dated: August 17, 2010

EXHIBIT

A

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

APR 22 2008

STATE OF ILLINOIS
Pollution Control Board
v.

PEOPLE OF THE STATE OF ILLINOIS,)
 Complainant,)
)
 AET ENVIRONMENTAL INC., a Colorado)
 Corporation, and E.O.R. ENERGY, LLC, a)
 Colorado limited liability company,)
 Respondent.)

PCB 07-95

Enforcement

NOTICE OF FILING

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the Respondent's Answer to the Complainant's Complaint and my Appearance on behalf of AET ENVIRONMENTAL INC., a Colorado Corporation, copies of which are hereby served upon you.



Lori M. DeVito

April 2007
May 14, 2007

Lori M. DeVito
AET Environmental, Inc.
14 Lakeside Lane
Denver, CO 80212
(303) 333-8521

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

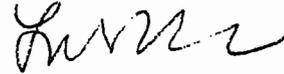
PEOPLE OF THE STATE OF ILLINOIS,)
 Complainant,)
))
))
AET ENVIRONMENTAL INC., a Colorado)
Corporation, and E.O.R. ENERGY, LLC, a)
Colorado limited liability company,)
))
 Respondent.)

PCB 07-95
Enforcement

RECEIVED
CLERK'S OFFICE
APR 22 2008
STATE OF ILLINOIS
Pollution Control Board

APPEARANCE

I hereby file my appearance pro se, as a non-attorney, on behalf of AET ENVIRONMENTAL, INC., a Colorado Corporation.



Lori M. DeVito

Lori M. DeVito
AET Environmental, Inc.
14 Lakeside Lane
Denver, CO 80212
(303) 333-8521

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached Respondent's Answer to Complainant's Complaint and my Appearance on behalf of AET ENVIRONMENTAL INC., a Colorado Corporation, by first class mail on April 14, 2008 upon the following party:

Michael D. Mankowski
Assistant Attorney General
Illinois Attorney General's Office
500 S. Second St.
Springfield, Illinois 62706



Lori M. DeVito

NOTARY PUBLIC
FRANK W. GINES JR.
NOTARY PUBLIC
STATE OF COLORADO

SUBSCRIBED AND SWORN TO ME this 14th
day of April, 20 08


Notary Public



April 14, 2008

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, Illinois 60601

RE: People v. AET Environmental, Inc., a Colorado corp., and E.O.R. Energy, LLC, a Colorado limited liability company.
PCB 07-95

Dear Sir:

Enclosed for filing please find the original and five copies of a Notice of Filing and RESPONDENT'S answers to COMPLAINANT'S REQUEST TO ADMIT FACTS BY AET ENVIRONMENTAL, INC., in regard to the above-captioned matter. Please file the originals and return file-stamped copies to me in the enclosed, self-addressed envelope.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lori M. DeVito', with a long, sweeping flourish at the end.

Lori M. DeVito

encl.

Source Environmental, Inc.

Denver: 14 Lakeside Ln. • Denver, CO 80212 • 303-333-8521
Salt Lake: 3653 So. 700 W • Salt Lake City, UT 84119 • 801-281-3507
Las Vegas: 3725 West Teco Ave. • Las Vegas, NV 89118 • 702-436-6228
Panama City: 3160 Airport Rd. • Panama City, FL 32405 • 850-873-8070

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
Complainant,)
)
AET ENVIRONMENTAL INC., a Colorado)
Corporation, and E.O.R. ENERGY, LLC, a)
Colorado limited liability company,)
Respondent.)

RECEIVED
CLERK'S OFFICE
PCB 07-95 APR 22 2008
Enforcement STATE OF ILLINOIS
Pollution Control Board

RESPONDENT'S ANSWER TO COMPLAINANT'S COMPLAINT

The Respondent, AET ENVIRONMENTAL INC., a Colorado Corporation, arguing on its own behalf, herein responds to the Complainant's Complaint as provided in Section 103.204(d) of the Board's rules.

COMPLAINANT'S REQUEST TO ADMIT FACTS BY AET ENVIRONMENTAL, INC.

1. In response to item 1, the Respondent is without knowledge or information as to the definition of "hazardous waste broker" sufficient to form a belief as to the truth of the allegations.
2. In response to item 2, the Respondent is without knowledge or information sufficient as to the meaning of the term "handles" to form a belief as to the truth of the allegations.
3. In response to item 3, the Respondent admits the allegations.
4. In response to item 4, the Respondent admits the allegations.
5. In response to item 5, the Respondent admits the allegations.
6. In response to item 6, the Respondent admits the allegations.
7. In response to item 7, the Respondent admits the allegations.
8. In response to item 8, the Respondent admits the allegations.
9. In response to item 9, the Respondent admits the allegations.
10. In response to item 10, the Respondent admits the allegations.

11. In response to item 11, the Respondent admits the allegations.
12. In response to item 12, the Respondent admits the allegations.
13. In response to item 13, the Respondent admits the allegations.
14. In response to items 14, the Respondent admits the allegations.
15. In response to item 15, the Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations.
16. In response to item 16, the Respondent believes the statements to be true but has no direct knowledge or information sufficient as to form an opinion as to the accuracy of the statements.
17. In response to item 17, the Respondent believes the statements to be true but has no direct knowledge or information sufficient as to form an opinion as to the accuracy of the statements.
18. In response to item 18, the Respondent believes the statements to be true but has no direct knowledge or information sufficient as to form an opinion as to the accuracy of the statements.
19. In response to item 19, the Respondent believes the statements to be true but has no direct knowledge or information sufficient as to form an opinion as to the accuracy of the statements.
20. In response to item 20, the Respondent does not understand the meaning of "hired to remove" nor believes that the date of July 15, 2002 is correct.
21. In response to item 21, the Respondent denies that it was hired to dispose of any materials.
22. In response to item 22, the Respondent admits to having a supplier deliver totes to Luxury Wheels in July of 2002.
23. In response to item 23, the Respondent admits the totes were ordered from Grief Bros and were delivered directly to Luxury Wheels.
- 24-25. In response to items 24 and 25, the Respondent believes the statements to be true.
26. In response to item 26, the Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations.
27. In response to item 27, the Respondent denies the allegations.
28. In response to item 28, the Respondent denies the allegations.
29. In response to item 29, the Respondent believes the statement to be true but is without sufficient knowledge or information to form a belief and to the truth of the allegations.

30. In response to item 30, the Respondent denies that the statement fully discloses the creation of the profile as to the involvement of all parties.
- 31-32. In response to item 31 and 32, the Respondent believes the statement to be correct.
33. In response to item 33, the Respondent denies the allegation.
- 34-41. In response to item 34 through 41, the Respondent believes the statements to be substantially true.
42. In response to item 42, the Respondent denies that the statement fully discloses the creation of the manifest as to the involvement of all parties.
- 43-46. In response to items 43 through 46, the Respondent believes the statements to be substantially correct.
47. In response to item 47, the Respondent denies the allegation.
- 48-49. In response to items 48 and 49, the Respondent believes the statements to be substantially correct.
50. In response to item 50, the Respondent does not have sufficient knowledge or information to attest to the validity of the statement due to the overly broad and ambiguous nature of the statement.
51. In response to item 51, the Respondent denies the allegation.
52. In response to item 52, the Respondent denies the allegation.
53. In response to item 53, the Respondent denies the allegation.
54. In response to item 54, the Respondent denies the allegation.
55. In response to item 55, the Respondent does not have sufficient knowledge or information as to the nature of the description to attest to the truth of the statement.
- 56-59. In response to items 56 through 59, the Respondent believes the statements to be substantially correct.
60. In response to item 60, the Respondent is without sufficient knowledge or information in order to develop a belief as to the accuracy of the statement.
61. In response to item 61, the Respondent denies the allegation.
62. In response to item 62, the Respondent denies the allegation.

63. In response to item 63, the Respondent denies the allegation but admits that the manifest was modified at the direction of the generator.
64. In response to item 64, the Respondent denies the allegation but admits that the manifest was modified at the direction of the generator.
65. In response to item 65, the Respondent denies the allegation but admits that the manifest was modified at the direction of the generator.
66. In response to item 66, the Respondent admits to statement.
67. In response to item 67, the Respondent admits to statement.
68. In response to item 68, the Respondent denies the allegation.
69. In response to item 69, the Respondent denies the allegation but admits that a profile was created at the direction of the generator for Safety Kleen.
- 70-72. In response to items 70 through 72, the Respondent believes the statements to be correct.
73. In response to item 73, the Respondent denies the allegation.
74. In response to item 74, the Respondent admits to statement.
- 75-84. In response to items 75 through 84, the Respondent believes the statements to be substantially correct.
85. In response to item 85, the Respondent denies the allegation.
86. In response to item 86, the Respondent denies the allegation.
- 87-88. In response to items 87 and 88, the Respondent denies the allegation.
89. In response to item 89, the Respondent denies the statement, the material arrived in a semi trailer and was not moved.
- 90-92. In response to items 90 through 92, the Respondent admits that the statements are substantially correct.
93. In response to item 93, the Respondent denies the allegation.
94. In response to item 94, the Respondent admits to the statement.
95. In response to item 95, the Respondent denies the allegation.

Electronic Filing - Received, Clerk's Office, August 17, 2010

96. In response to item 96, the Respondent denies the allegation.
97. In response to item 97, the Respondent denies the allegation.
- 98-106. In response to items 98 through 106, the Respondent denies the allegations.
107. In response to item 107, the Respondent does not have sufficient knowledge or information so as to form a belief as to the truth of the statement.
108. In response to item 108, the Respondent denies the truth of the statement.
109. In response to item 109, the Respondent denies the truth of the statement.
110. In response to item 110, the Respondent denies the truth of the statement.
111. In response to item 111, the Respondent deems the allegation to be ambiguous and is without sufficient knowledge or information in order to develop a belief as to the truth of the statement.
112. In response to item 112, the Respondent deems the allegation to be ambiguous and is without sufficient knowledge or information in order to develop a belief as to the truth of the statement.
113. In response to item 113, the Respondent denies the allegation.
114. In response to item 114, the Respondent denies the allegation but admits that material was added at the direction of the generator.
115. In response to item 115, the Respondent denies the allegation but admits that material was added at the direction of the generator.
116. In response to item 116, the Respondent denies the allegation but admits that the material was redistributed for the later convenience of use at the direction on the generator.
117. In response to item 117, the Respondent admits to the statement.
118. In response to item 118, the Respondent admits to the statement.
119. In response to item 119, the Respondent denies the allegation.
120. In response to item 120, the Respondent denies the allegation.
121. In response to item 121, the Respondent denies the allegation.
122. In response to item 122, the Respondent believes the statement to be correct.

123. In response to item 123, the Respondent is without knowledge or information sufficient in order to develop a belief as to the truth of the statement.

124. In response to item 124, the Respondent denies the allegation.

125. In response to item 125, the Respondent deems the allegation to be ambiguous and is without sufficient knowledge or information in order to develop a belief as to the truth of the statement

126. In response to item 126, the Respondent denies the allegation.

127. In Response to item 127, the Respondent deems the allegation to be ambiguous and is without sufficient knowledge or information in order to form a belief as to the truth of the statements.

128 to

137. In response to items 128 through 137, the Respondent believes the statements to be substantially correct, and all were performed at the direction of the generator.

138. In response to item 138, the Respondent is without knowledge or information sufficient to know the accuracy of the statement.

139. In response to item 139, the Respondent admits to the statement.

Respectfully submitted,



Lori M. Devito

Lori M. Devito
AET Environmental, Inc.
14 Lakeside Lane
Denver, CO 80212
(303) 333-8521