

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

JUL 28 2003

PEOPLE OF THE STATE OF ILLINOIS,)

Complainants,)

vs.)

QC FINISHERS, INC., an Illinois Corporation,))

Respondent.)

PCB # 01-07

(Enforcement-Air)

STATE OF ILLINOIS
Pollution Control Board

NOTICE OF FILING

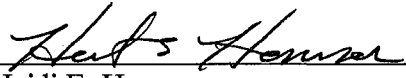
To:

Ms. Paula Becker Wheeler
Assistant Attorney General
Office of the Attorney General
188 West Randolph Street, 20th Floor
Chicago, Illinois 60601

Mr. Bradley Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 W. Randolph Street
Chicago, Illinois 60601

PLEASE TAKE NOTICE that I have today filed with the persons listed above a copy of
RESPONDENTS MOTION TO QUASH NOTICES OF DEPOSITION on behalf of QC
Finishers, Inc., a copy of which is hereby served upon you.

Respectfully submitted,


Heidi E. Hanson

Dated July 25, 2003

Heidi E. Hanson
H. E. Hanson, Esq. P.C.
4721 Franklin Ave, Suite 1500
Western Springs, IL 60558-1720
(708) 784-0624

RECEIVED

CLERK'S OFFICE

JUL 28 2003

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)

Complainant,)

vs.)

Q C FINISHERS, INC., an Illinois Corporation,))

Respondent.)

STATE OF ILLINOIS
Pollution Control Board

PBC # 01-07
(Enforcement-Air)

RESPONDENT'S MOTION TO QUASH NOTICES OF DEPOSITION

NOW COMES Respondent, QC Finishers, Inc., by and through its attorney, H.E. Hanson, Esq. P.C., and moves the Hearing Officer pursuant to 35 Ill. Adm. Code 101.622(d) to quash the notices of deposition issued to Charles Stitzel, Zbigniew Skirucha, Paul Podedworny, Paul Gratzke, Steve Anderson and Frank Bartholomew. In support of this motion Respondent states as follows:

1. Complainant has issued six notices of deposition to the persons listed above. The notices purport to command the production of certain documents, identified on Attachment A to each notice. True and correct copies of the notices are attached.

2. The Illinois Environmental Protection Act, 415 ILCS 5/5(e) provides that the "Board may subpoena and compel the attendance of witnesses and the production of evidence." Board rule 35 Ill Adm. Code 101.622(a), further provides that "the Clerk will issue subpoenas for the attendance of witnesses at a hearing or deposition. Subpoena forms are available at the Board's office."

3. The notices filed by Respondent were not effective as subpoenas in the following respects:

- a. They were not issued by the Clerk of the Illinois Pollution Control Board.
- b. They were not on subpoena forms.
- c. They did not offer witness fees pursuant to 35 Ill Adm. Code 101.622(e).

4. The Board's rules specify standards and filing requirements for subpoenas. The Board's rules do not address or specifically permit parties to compel the attendance of witnesses by "notice."

5. Board rule, 35 Ill. Adm. Code 101.622(c), provides that subpoenas may include a command to produce papers, etc.. The notices are not subpoenas, therefore they may not command the production of documents.

6. The notices were improperly served and are therefore void for the following reasons:

a. The names and addresses of the persons most knowledgeable about the facts in the Complaint were timely supplied to Complainant on June 16, 2003. The Hearing Officer Order of April 2, 2003 stated that deposition notices were to be served on or before July 7, 2003. The Certificate of Service states that it was filed on July 8, 2003. Thus the notices were filed a day late in violation of the Hearing Officer order.

b. 35 Ill Adm. Code 101.622(b) provides that a "copy of the subpoena must be filed with the Clerk and served upon the hearing officer within 7 days after service upon the witness. Failure to serve both the Clerk and the hearing officer will render the subpoena null and void..." No Proof of Service or Certificate of Service showing that the notice was filed the Board's Clerk was served upon Respondent.

7. The two notices sent to the nonparties, Steve Anderson, an independent consultant, and Frank Bartholomew, a former employee, are additionally deficient in the following respects:

a. The Board's rules provide that "any discovery request under these rules to any nonparty must be filed with the Clerk of the Board with a signed original and 4 duplicate copies (5 total)... 35 Ill. Adm. Code 101.302(i). No proof of such service was filed with the two nonparty notices.

b. Without the approval of the Clerk of the Board, as evidenced by her signature on the subpoena form, neither the parties nor the Hearing Officer has the authority to compel the production of documents by an individual who is not an employee or an officer of a party in the case.

8. The information demanded in Attachment A of the notices is impermissibly broad in scope and would result in undue expense, undue delay and harassment of the witnesses in the following respects:

a. Paragraph 1, which is identical in all six notices, requests "any and all documents related to...the operation of Q C Finishers." The production of each and every document related to Q C Finishers 18 years of operation would be a massive undertaking.

b. Paragraph 4, which is identical in all six notices, requests all documents and correspondence between Q C Finishers and manufacturers of certain material used at Q C Finishers from 1985 until approximately 1999, a period of sixteen years. This is also an unduly burdensome request.

c. The notices sent to Messrs. Stitzel, Podedworny, Skirucha and Gratzke are deficient in that paragraphs 5 and 6 seek information on Q C Finishers assets and lease, neither of which is relevant to the alleged violations or to the Act's 33(c) or 42(h) factors. Further the information sought by the paragraphs would also include confidential information which would be protected from disclosure pursuant to 35 Ill Adm. Code 101.614.

11. Last, the notices sent to each witness contained the threat that the People "reserve the right to seek reimbursement of costs from deponent...in the event said deponent does not produce documents required by this notice."

12. The Board does not have the authority to assess costs against witnesses. 35 Ill Adm. Code 101.622(g) and 101.800.

"Section 101.800 does not allow the Board to monetarily sanction the offending party. (See revision of the Board's Procedural Rules 35 Ill. Adm. Code 101-130, R00-20 slip op. at 7 (Dec.21, 2000)) where the Board eliminated language allowing the Board to sanction the offending party with reasonable costs incurred by the moving party in obtaining an order for sanctions.)" Lawrence v. North Point Grade School, PCB 02-10, 2003 Ill ENV LEXIS 180 (April 3, 2003).

13. In addition, because the Attorney General did not comply with the Board's rules, did not obtain a subpoena issued by the Board's Clerk, and did not comply with the Hearing Officer's Order in the issuance of the notices it has no basis to seek any sanction.

14. The threat stated in the notices has no basis in law and therefore served only to harass, threaten and worry the individuals to whom the notices were directed.

15. In summary, the notices filed by Complainant purport to be the equivalent of subpoenas but they do not comport with the Board's rules governing subpoenas. Only the Board's Clerk has the authority to issue subpoenas to compel the attendance of witnesses at depositions. In addition the notices were untimely, not properly served, and unduly burdensome. For these and other reasons stated above the notices are null and void and without legal effect.

16. Of greatest concern is that the notices inappropriately threaten individuals with monetary sanctions that the Board does not impose.

17. Complainant failed to use the Board's approved subpoena forms and instead has written a notice that improperly threatens individuals in the Board's name. This constitutes a willful attempt to obtain information by an improper discovery method pursuant to 35 Ill Adm. Code Section 101.802. Therefore it is appropriate to prohibit the Complainant, pursuant to 35 Ill Adm. Code 101.614, from filing additional notices or subpoenas and further contributing to the delay and expense of this proceeding, and to the harassment of these individuals.

WHEREFORE Respondent, QC Finishers, Inc. prays that this Court enter its Order quashing the notices with prejudice to leave to refile additional notices and /or subpoenas.

Respectfully Submitted,

QC Finishers, Inc.

By 
Its attorney

Dated: July 24, 2003

Heidi E. Hanson
H. E. Hanson, Esq. P.C.
4721 Franklin Ave., Suite 1500
Western Springs, IL 60558-1720
(708) 784-0624

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS

Complainant,

vs-

QC FINISHERS, INC., an Illinois
corporation,

Respondent.

PCB No. 01-7
(Enforcement - Air)

| | |
|----------------------------|----------------------------------|
| TO: Heidi E. Hanson | Mr. Bradley Halloran |
| H.E. Hanson, Esq. P.C. | Hearing Officer |
| 4721 Franklin Avenue | Illinois Pollution Control Board |
| Suite 1500 | JRTC, Suite 11-500 |
| Western Springs, IL 60558- | 100 W. Randolph Street |
| 1720 | Chicago, IL. 60601 |

NOTICE OF FILING

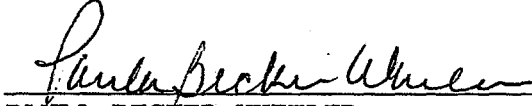
PLEASE TAKE NOTICE that we have today, July 8, 2003 filed with the above named persons, copies of Complainant's Notice of Depositions, a copies of which are attached herewith and served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General of the
State of Illinois

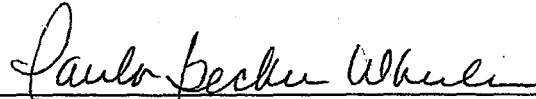
BY:


PAULA BECKER WHEELER
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Flr.
Chicago, IL 60601
(312) 814-1511

THIS FILING IS SUBMITTED ON RECYCLED PAPER

CERTIFICATE OF SERVICE

I, Paula Becker Wheeler, an Assistant Attorney General in this case, do certify that on this 8th day of July 2003, I caused to be served the foregoing Notice of Filing, Notice of Depositions upon the persons named within by U.S. Mail at the above addresses.



PAULA BECKER WHEELER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS

Complainant,

vs-

QC FINISHERS, INC., an Illinois
corporation,

Respondent.

PCB No. 01-7
(Enforcement - Air)

NOTICE OF DEPOSITION

On July 24, 2003 at 9:30 am, I, as attorney for Complainant, People of the State of Illinois, pursuant to all applicable Rules of the Illinois Supreme Court and the Illinois Code of Civil Procedure, will take in this action for the use and purpose of discovery the deposition of Charles Stitzel, upon oral examination, and we shall also inspect certain records which are to be produced by the deponent and which are described in Attachment A hereto. The deposition will be taken before a notary public, who is not a relative of nor attorney for any of the parties, nor is a relative of any party's attorney, nor financially interested in this matter. Said deposition shall take place at the Office of the Illinois Attorney General's Northern Environmental Bureau, 188 W. Randolph Street, 20th Floor, Chicago, IL 60601. We reserve the right to continue the deposition to another date and seek reimbursement of costs from deponent Charles Stitzel in the event said deponent does not produce documents required by this notice.

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

ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorneys General

By:

Paula B. Wheeler

PAULA BECKER WHEELER

Assistant Attorney General

Environmental Bureau

188 W. Randolph St. 20th Fl.

Chicago, Illinois 60601

(312) 814-1511 / (312) 814-0608

Attachment A

The deponent should be prepared to discuss the following topics and provide any and all documents related to those topics:

1. The operation of QC Finishers, Inc., located at 10244 Franklin Avenue, Franklin Park, Cook County, Illinois ("Facility"), including information and documents reflecting related party transactions between QC Finishers, Inc. and its shareholders.
2. Corporate officer and employee responsibility in relation to QC Finishers, Inc. located at the Facility.
3. Any and all business dealings and documents submitted to the Illinois Environmental Protection Agency on behalf of QC Finishers, Inc.
4. Any and all documents and correspondence between QC Finishers, Inc. and manufacturers of coatings, solvents, thinners, reducers, and any other volatile organic material containing substances used at QC Finishers, Inc. for any purpose from 1985 until the zeolite finisher was installed, including all Material Safety Data Sheets.
5. QC Finishers, Inc. assets and the disposition of QC Finishers., Inc. assets from 1985 until the present.
6. All information and documents reflecting the ownership of QC Finishers, Inc. and its lease payments and lease requirements for the facilities located at the above address, and any information or documents reflecting the ownership of the property and facilities located at the address above.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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| PEOPLE OF THE STATE OF ILLINOIS |) | |
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| Complainant, |) | |
| |) | |
| vs- |) | PCB No. 01-7 |
| |) | (Enforcement - Air) |
| QC FINISHERS, INC., an Illinois |) | |
| corporation, |) | |
| |) | |
| Respondent. |) | |

NOTICE OF DEPOSITION

On July 24, 2003 at 1:30 pm, I, as attorney for Complainant, People of the State of Illinois, pursuant to all applicable Rules of the Illinois Supreme Court and the Illinois Code of Civil Procedure, will take in this action for the use and purpose of discovery the deposition of Paul D. Gratzke, upon oral examination, and we shall also inspect certain records which are to be produced by the deponent and which are described in Attachment A hereto unless already produced. The deposition will be taken before a notary public, who is not a relative of nor attorney for any of the parties, nor is a relative of any party's attorney, nor financially interested in this matter. Said deposition shall take place at the Office of the Illinois Attorney General's Northern Environmental Bureau, 188 W. Randolph Street, 20th Floor, Chicago, IL 60601. We reserve the right to continue the deposition to another date and seek reimbursement of costs from deponent Paul D. Gratzke, in the event said deponent does not produce documents required by this notice.

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

ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorneys General

By:

Paula B. Wheeler

PAULA BECKER WHEELER

Assistant Attorney General

Environmental Bureau

188 W. Randolph St. 20th Fl.

Chicago, Illinois 60601

(312) 814-1511 / (312) 814-0608

Attachment A

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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| |) | (Enforcement - Air) |
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| corporation, |) | |
| |) | |
| Respondent. |) | |

NOTICE OF DEPOSITION

On July 25, 2003 at 9:30 am, I, as attorney for Complainant, People of the State of Illinois, pursuant to all applicable Rules of the Illinois Supreme Court and the Illinois Code of Civil Procedure, will take in this action for the use and purpose of discovery the deposition of Paul Podedworny, upon oral examination, and we shall also inspect certain records which are to be produced by the deponent and which are described in Attachment A hereto unless already produced. The deposition will be taken before a notary public, who is not a relative of nor attorney for any of the parties, nor is a relative of any party's attorney, nor financially interested in this matter. Said deposition shall take place at the Office of the Illinois Attorney General's Northern Environmental Bureau, 188 W. Randolph Street, 20th Floor, Chicago, IL 60601. We reserve the right to continue the deposition to another date and seek reimbursement of costs from deponent Paul Podedworny, in the event said deponent does not produce documents required by this notice.

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

ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorneys General

By:

Paula B. Wheeler

PAULA BECKER WHEELER

Assistant Attorney General

Environmental Bureau

188 W. Randolph St. 20th Fl.

Chicago, Illinois 60601

(312) 814-1511 / (312) 814-0608

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| corporation, |) | |
| |) | |
| Respondent. |) | |

NOTICE OF DEPOSITION

On July 25, 2003 at 1:30 pm, I, as attorney for Complainant, People of the State of Illinois, pursuant to all applicable Rules of the Illinois Supreme Court and the Illinois Code of Civil Procedure, will take in this action for the use and purpose of discovery the deposition of Zbigniew Skirucha, upon oral examination, and we shall also inspect certain records which are to be produced by the deponent and which are described in Attachment A hereto unless already produced. The deposition will be taken before a notary public, who is not a relative of nor attorney for any of the parties, nor is a relative of any party's attorney, nor financially interested in this matter. Said deposition shall take place at the Office of the Illinois Attorney General's Northern Environmental Bureau, 188 W. Randolph Street, 20th Floor, Chicago, IL 60601. We reserve the right to continue the deposition to another date and seek reimbursement of costs from deponent Zbugbuew Skirucha, in the event said deponent does not produce documents required by this notice.

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

ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorneys General

By:

Paula B. Wheeler

PAULA BECKER WHEELER

Assistant Attorney General

Environmental Bureau

188 W. Randolph St. 20th Fl.

Chicago, Illinois 60601

(312) 814-1511 / (312) 814-0608

Attachment A

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| vs- |) | PCB No. 01-7 |
| |) | (Enforcement - Air) |
| QC FINISHERS, INC., an Illinois |) | |
| corporation, |) | |
| |) | |
| Respondent. |) | |

NOTICE OF DEPOSITION

To: Mr. Steve Anderson
538 Lowell Avenue
Glen Ellyn, IL 60137

On July 30, 2003 at 1:30 pm, I, as attorney for Complainant, People of the State of Illinois, pursuant to all applicable Rules of the Illinois Supreme Court and the Illinois Code of Civil Procedure, will take in this action for the use and purpose of discovery the deposition of **Steve Anderson**, upon oral examination, and we shall also inspect certain records which are to be produced by the deponent and which are described in Attachment A hereto. The deposition will be taken before a notary public, who is not a relative of nor attorney for any of the parties, nor is a relative of any party's attorney, nor financially interested in this matter. Said deposition shall take place at the **Office of the Illinois Attorney General's Northern Environmental Bureau, 188 W. Randolph Street, 20th Floor, Chicago, IL 60601**. We reserve the right to continue the deposition to another date and seek reimbursement of costs from deponent Steve Anderson, in the event said deponent does not produce documents required by this notice.

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

ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorneys General

By:

Paula Becker Wheeler

PAULA BECKER WHEELER
Assistant Attorney General
Environmental Bureau
188 W. Randolph St. 20th Fl.
Chicago, Illinois 60601
(312) 814-1511 / (312) 814-0608

Attachment A

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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| PEOPLE OF THE STATE OF ILLINOIS |) | |
| |) | |
| Complainant, |) | |
| |) | |
| vs- |) | PCB No. 01-7 |
| |) | (Enforcement - Air) |
| QC FINISHERS, INC., an Illinois |) | |
| corporation, |) | |
| |) | |
| Respondent. |) | |

NOTICE OF DEPOSITION

To: Mr. Frank Bartholomew
374 Hiawatha Drive
Wood Dale, IL 60191

On July 31, 2003 at 9:30 am, I, as attorney for Complainant, People of the State of Illinois, pursuant to all applicable Rules of the Illinois Supreme Court and the Illinois Code of Civil Procedure, will take in this action for the use and purpose of discovery the deposition of **Frank Bartholomew**, upon oral examination, and we shall also inspect certain records which are to be produced by the deponent and which are described in Attachment A hereto. The deposition will be taken before a notary public, who is not a relative of nor attorney for any of the parties, nor is a relative of any party's attorney, nor financially interested in this matter. Said deposition shall take place at the Office of the Illinois Attorney General's Northern Environmental Bureau, 188 W. Randolph Street, 20th Floor, Chicago, IL 60601. We reserve the right to continue the deposition to another date and seek reimbursement of costs from deponent Frank Bartholomew, in the event said deponent does not produce documents required by this notice.

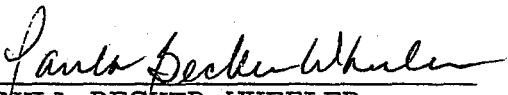
Respectfully submitted,

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

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

ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorneys General

By:


PAULA BECKER WHEELER
Assistant Attorney General
Environmental Bureau
188 W. Randolph St. 20th Fl.
Chicago, Illinois 60601
(312) 814-1511 / (312) 814-0608

Attachment A

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CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served copies of the attached RESPONDENTS MOTION TO QUASH NOTICES OF DEPOSITION by placing said document in the U. S. Mail with postage prepaid before 4: 00 p.m. on July 25, 2003 upon the following persons:

Original and four (4) copies

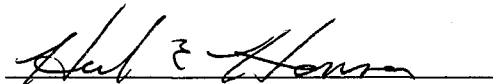
Clerk, Illinois Pollution Control Board
100 W. Randolph Street
State of Illinois Center
Suite 11-500
Chicago, Illinois 60601

One copy each to:

Paula Becker Wheeler
Assistant Attorney General
Office of the Attorney General
188 West Randolph Street, 20th Floor
Chicago, Illinois 60601

Mr. Bradley Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 W. Randolph Street
Chicago, Illinois 60601

Dated: July 25, 2003

A handwritten signature in cursive script, appearing to read "Heidi E. Hanson", is written over a horizontal line.

Heidi E. Hanson
H. E. Hanson, Esq. P.C.
4721 Franklin Ave, Suite 1500
Western Springs, IL 60558-1720
(708) 784-0624

This filing is submitted on recycled paper.