

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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JUL 25 2003

PEOPLE OF THE STATE OF ILLINOIS

Complainant,

vs-

QC FINISHERS, INC., an Illinois
corporation,

Respondent.

PCB No. 01-7
(Enforcement - Air)

STATE OF ILLINOIS
Pollution Control Board

TO: Heidi E. Hanson Mr. Bradley P. 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 25, 2003 filed with the above named persons, copies of Complainant's Motion to Quash Subpoena of Crystal Myers-Wilkins, a copy of which is attached herewith and served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General of the
State of Illinois

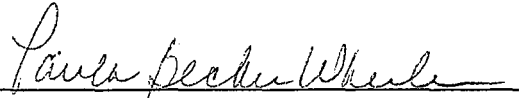
BY:

Paula Becker Wheeler
PAULA BECKER WHEELER
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Flr.
Chicago, IL 60601
(312) 814-1511, 814-0608

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 25th day of July, 2003, I caused to be served the foregoing Notice of Filing Motion to Quash Subpoena of Crystal Myers-Wilkins upon the persons named within by U.S. Mail to Heidi Hanson at the above address and in person to Bradley P. Halloran at the above address.


PAULA BECKER WHEELER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF)	
ILLINOIS,)	
)	
Complainant,)	
)	
vs-)	PCB No. 01-07
)	(Enforcement - Air)
QC FINISHERS, INC., an)	
Illinois corporation,)	
)	
Respondent.)	

MOTION TO QUASH DEFENDANT'S SUBPOENA

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, respectfully move, pursuant to Rule 201(c) of the Illinois Supreme Court, and Section 101.622 of the Board's regulations, that an order be entered upon Respondent, Q.C. Finishers, quashing the subpoena Respondent issued to Crystal Myers-Wilkins on or about July 6, 2003. In support of said Motion, Complainant states as follows:

1. On July 14, 2000, Complainant filed a complaint against QC FINISHERS, INC. ("QC"), alleging various environmental violations leading to and including air pollution.
2. On March 1, 2003, Respondent filed an Answer to said Complaint with amended affirmative defenses.
3. Discovery was initiated in April of 2003, and is ongoing.
4. On July 6, 2003, a Subpoena for Deposition of CRYSTAL MYERS-WILKINS, an attorney for the Illinois Environmental

Protection Agency ("Illinois EPA") in the Division of Legal Counsel of said agency, was mailed to the Complainant's attorney.

5. Section 101.616 of the Illinois Pollution Control Board ("Board") rules, 35 Ill. Adm. Code 101.616(a), states:

- (a) All relevant information and information calculated to lead to relevant information is discoverable excluding those materials that would be protected from disclosure in the courts of this State pursuant to statute, Supreme Court Rules or common law, and materials protected from disclosure under 35 Ill. Adm. Code 130.

6. Illinois Supreme Court Rule 201(b)(2), Ill. S. Ct. Rule 201(b)(2), states:

Privilege and Work Product. All matters that are privileged against disclosure on the trial, including privileged communications between a party or his agent and the attorney for the party, are privileged against disclosure through any discovery procedure. Material prepared by or for a party in preparation for trial is subject to discovery only if it does not contain or disclose the theories, mental impressions, or litigation plans of the party's attorney. The court may apportion the cost involved in originally securing the discoverable material, including when appropriate a reasonable attorney's fee, in such manner as is just.

7. In Shapo v. Tires 'n Tracks, Inc., 336 Ill.App.3d 387, 393 (1st Dist, 2002), the attorney client privilege as:

[W]here any legal advice of any kind is sought from a professional legal advisor in his capacity as such, the communications relating to that purpose, made in confidence by the client, are protected from disclosure by himself or the legal adviser.

8. Respondent has available and has already subpoenaed Chris Romaine, an inspector with the Illinois EPA. Other witnesses available to the Respondent include Gary Beckstead, an Illinois EPA employee in the Air Quality Section, Valerie Brodsky, an Illinois EPA employee in Permits, and Harish Narayeov, an Illinois EPA Regional Manager, all experts or witnesses in the areas of air VOM emissions and violations alleged in the Complaint.

9. Crystal Myers-Wilkins is not an expert in the areas alleged as violations in the complaint, therefore any testimony by her to this issue would be irrelevant.

10. Crystal Myers-Wilkins is an attorney who has been working on the behalf of the Illinois EPA and with the Illinois Attorney General's Office on this case.

11. The Illinois EPA and the Illinois Attorney General's office have an attorney-client relationship in that this case was brought by the Illinois Attorney General at the request of the Illinois EPA, pursuant to Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2002).

12. Any relevant testimony Crystal Myers-Wilkins might possibly offer in this matter would be privileged by either the attorney-client privilege or the attorney work-product doctrine as those terms are defined in applicable case law and Illinois Supreme Court Rules.


13. Because this material is privileged, it is not discoverable in accordance with Section 101.616 of the Board rules, 35 Ill. Adm. Code 101.616(a).

WHEREFORE, for the foregoing reasons, Complainant respectfully requests the Board quash Respondent's July 6, 2003 Subpoena with regard to Crystal Myers-Wilkins, without leave to reinstate.

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

By: 
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