

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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JAN 19 2005

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
by LISA MADIGAN, Attorney)
General of the State of Illinois)
)
Complainant,)
)
v.)
)
GTC, INTERNATIONAL,)
an Illinois corporation,)
)
Respondent.)

No. PCB 05-32

NOTICE OF FILING

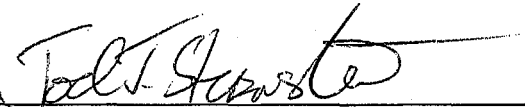
TO: See Attached Service List

PLEASE TAKE NOTICE that on January 19, 2005, the People of the State of Illinois filed with the Illinois Pollution Control Board a MOTION TO DEEM ALL MATERIAL FACTS ADMITTED AND MOTION FOR SUMMARY JUDGMENT, true and correct copies of which are attached and hereby served upon you.

Respectfully submitted,

LISA MADIGAN
Attorney General
State of Illinois

BY:



JOEL J. STERNSTEIN
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601
(312) 814-6986

THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

Ms. Maureen Wozniak, Esq.
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

President and/or Chief Executive Officer
GTC International, Inc.
1121 W. Warner Blvd.
Tempe, AZ 85284

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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MOTION TO DEEM ALL MATERIAL FACTS ADMITTED
AND MOTION FOR SUMMARY JUDGMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, requests that the Illinois Pollution Control Board ("Board") grant, pursuant to Sections 103.204 and 101.516 of the Board's regulations, 35 Ill. Adm. Code 103.204 and 101.516, Complainant's motion to deem all material facts alleged against Respondent GTC, INTERNATIONAL, to be admitted, and to grant summary judgment in favor of Complainant, and against Respondent on Counts I through X of the Complaint. In support thereof, Complainant states as follows:

1. This action was brought on behalf of the People of the State of Illinois by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion, and upon the request of the Illinois Environmental Protection Agency ("Illinois EPA") pursuant to Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2002).

2. Complainant filed its complaint on August 18, 2004. Complainant sent the filed complaint via certified mail to Mr. Gerald Tenner, then acting as attorney for Respondent.¹ No answer was filed.

3. Although Mr. Tenner filed nothing with the Board to so indicate, Mr. Tenner told Complainant's counsel that he has withdrawn representation as counsel for Respondent. Mr. Tenner has not participated in this matter since a telephone conference call with the Hearing Officer and Complainant's counsel on September 30, 2004.

4. Section 101.400 of the Board's Regulations, 35 Ill. Adm. Code 101.400, states, in pertinent part:

a) Appearances . . .

* * *

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]).

5. In order to appear before the Board, and before it can file any pleadings with the Board, Respondent needs to secure the representation of an attorney.

6. On October 29, 2004, Complainant sent a certified letter to the President and/or Chief Executive Officer of Respondent advising Respondent of the consequences of failure to

¹The green card indicating that Complainant served Mr. Tenner with a copy of the complaint is attached as Exhibit A.

secure legal representation.²

7. The certified letter was returned directing that mail for Respondent should be sent to an address in Tempe, Arizona.³

8. On November 9, 2004, Complainant sent a certified letter similar to the October 29 letter to Respondent at its Office in Tempe, Arizona.⁴ The green card attached to the certified letter was signed and returned to Complainant's attorney.⁵

9. Since Mr. Tenner withdrew representation of Respondent in this matter, no other attorney has entered an appearance on behalf of Respondent as of January 19, 2005. Respondent has not filed an answer nor otherwise plead to the Complaint as of January 19, 2005.

10. Section 103.204 of the Board's Regulations, 35 Ill. Adm. Code 103.204, provides, in pertinent part, as follows:

(d) 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. Any facts constituting an affirmative defense must be plainly set forth before hearing in the answer or in a supplemental answer, unless the affirmative defense could not have been known before hearing.

² Attached as Exhibit B.

³ Attached as Exhibit C.

⁴ Attached as Exhibit D.

⁵ Attached as Exhibit E.

11. As of the date of filing this Motion, fifty-seven (57) days have passed since the green card was signed by a representative of Respondent. More significantly, five (5) months have passed since the Complaint was filed.

12. Complainant therefore requests that the Board find, pursuant to 35 Ill. Adm. Code 103.204, that all material allegations of the complaint are deemed to be admitted by Respondent.

13. In the Complaint, Complainant sufficiently alleges the following violations of the Act against Respondent:

Count I Construction of an emissions source without a permit in violation of Sections 9(b) of the Act, 415 ILCS 5/9(b) (2002), and Section 201.142 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.142

Count II Failure to timely submit a Clean Air Act Permit Program application in violation of Section 39.5(6) (b) of the Act, 415 ILCS 5/39.5(6) (b) (2002), and Section 9(b) of the Act

Count III Failure to demonstrate compliance with New Source Review requirements in violation of Section 203.302(a) (1) (D) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 203.302(a) (1) (D), and Section 9(a) of the Act, 415 ILCS 5/9(a) (2002)

Count IV Violation of NSR requirements in violation of Sections 9(a) of the Act and Section 203.201 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 203.201

Count V Construction of a New Major VOM Source without a permit in violation of 9(a) of the Act and Section 203.203(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 203.203(a)

Count VI Failure to timely submit An Emissions Market Reduction System (ERMS) application in violation

of Section 9(a) of the Act and Section 205.310 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 205.310

Count VII Use of noncompliant coatings (permit violation) in violation of Sections 9(b) of the Act and Condition 2 of Operating Permit No. 99030044

Count VIII Use of noncompliant coatings (regulatory violation) in violation of Sections 9(a) of the Act and Section 218.926(b)(1) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.926(b)

Count IX Submission of inaccurate Annual Emission Reports in violation of Section 254.303 of the Illinois EPA's Air Pollution Regulations, 35 Ill. Adm. Code 254.303; Section 201.302(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.302(a); and Section 9(a) of the Act

Count X Submission of inaccurate Seasonal Emission Reports in violation of Section 254.132(b) of the Illinois EPA's Air Pollution Regulations, 35 Ill. Adm. Code 254.132(b), Section 205.300 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 205.300; and Section 9(a) of the Act

14. Section 101.516 of the Board's Regulations, 35 Ill.

Adm. Code 101.516 provides, in pertinent part, as follows:

b) 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.

15. If the Board finds that all material allegations are deemed admitted pursuant to 35 Ill. Adm. Code 103.204, no material issue of fact will remain. Complainant is therefore entitled to summary judgment pursuant to 35 Ill. Adm. Code 101.516.

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

a. Deeming all material allegations in the Complaint to be admitted;

b. Granting summary judgment, in favor of Complainant and against Respondent, on Counts I through X of the Complaint;

c. Setting a date for hearing on the issue of penalties in this matter, or setting a deadline for Complainant to submit a brief on the issue of penalties in this matter, or assessing against Respondent a penalty of \$50,000 for each and every violation of the Act, the Board's regulations, and any operating permit provisions alleged in the Complaint, and an additional penalty of \$10,000 for each day that the violations continued;

d. Requiring Respondent to take all steps necessary to abate the violations of the Act and the Board's regulations;


e. Requiring Respondent to cease and desist from further violations of the Act, the Board's Regulations, and its operating permit;

f. Requiring Respondent to pay Complainant's costs, including reasonable attorney, consultant, and expert witness fees; and

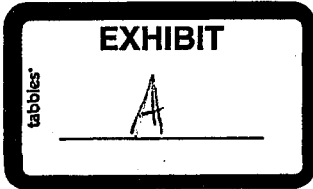
g. Granting such other relief as the Board deems appropriate and just.

Respectfully submitted,

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

By: 
JOEL J. STERNSTEIN
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Fl.
Chicago, Illinois 60601
(312) 814-6986

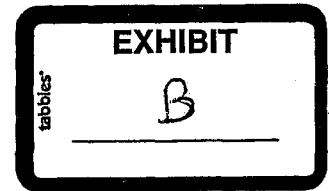
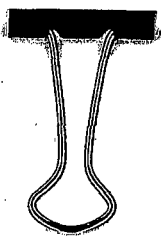
G:\Environmental Enforcement\JOEL\Case Documents\GTC Int\Motion for SJ.doc.rtf



SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	A. Received by (Please Print Clearly) <i>Mr. Tenner</i>	B. Date of Delivery <i>9/18/04</i>
1. Article Addressed to: Mr. Gerald Tenner, Esq. Marks, Marks & Kaplan 120 N. LaSalle St., Suite 3200 Chicago, Illinois 60602	C. Signature X <i>[Signature]</i> <div style="float: right;"> <input type="checkbox"/> Agent <input type="checkbox"/> Address </div>	
2. Article Number (Copy from service label) 7002 0860 0004 7153 3381	D. Is delivery address different from item 1? If YES, enter delivery address below: <div style="float: right;"> <input type="checkbox"/> Yes <input type="checkbox"/> No </div>	
PS Form 3811, July 1999	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes 7002 0860 0004 7153 3381

Domestic Return Receipt

102595-99-M-176



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

October 29, 2004

President and/or Chief Executive Officer
GTC International, Inc.
6401 W. 65th Street
Bedford Park, IL 60638
facsimile (708) 594-1476

via certified US Mail and facsimile

Re: People v. GTC International Inc.: Pollution Control Board Docket No. 05-32

To whom it may concern,

On August 18, 2004 the People of the State of Illinois filed the above-referenced matter before the Illinois Pollution Control Board. The complaint against GTC International Inc. ("GTC") concerns several air pollution violations of the Illinois Environmental Protection Act ("Act"), Illinois EPA regulations, Illinois Pollution Control Board ("Board") regulations, and GTC's air permit related to operations at a facility located at 6401 W. 65th Street, Bedford Park, Illinois.

Gerald Tenner of Marks, Marks & Kaplan in Chicago was counsel for GTC in this matter but has informed me that he no longer represents GTC. Please have another attorney who represents GTC contact me as soon as possible to discuss this matter with me.

If no other attorney contacts me on behalf of GTC at the address or telephone number below by November 16, 2004, I will assume that GTC will not be represented by counsel in this matter. At that point or soon thereafter, I will file a motion for default against GTC before the Board. Please bear in mind that violations of the Act and the Board regulations entail penalties of up to \$50,000 per violation and \$10,000 per day that each violation ensues.

Sincerely,

Joel Sternstein
Assistant Attorney General
Environmental Bureau North
188 West Randolph Street, 20th Floor
Chicago, Illinois 60601
(312) 814-6986

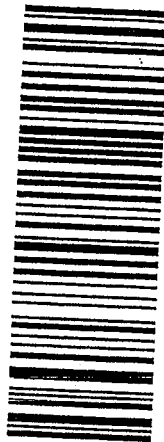
Cc: Maureen Wozniak, Illinois EPA Division of Legal Counsel, Springfield

EXPLORE

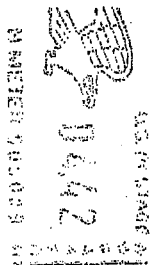
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LISA MADIGAN
ATTORNEY GENERAL
STATE OF ILLINOIS
100 West Randolph Street
Chicago, IL 60601

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CERTIFIED MAIL



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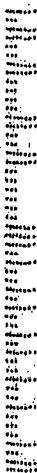
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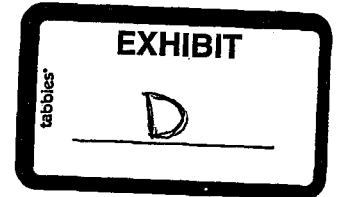
1121 W WARNER RD.

Tempe Az. 85284

President and/or Chief Executive Officer
~~GTC International, Inc~~
6401 W. 65th Street
Bedford Park, IL 60638

CERTIFIED MAIL - RETURN RECEIPT REQUESTED





OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 9, 2004

President and/or Chief Executive Officer
GTC International, Inc.
1121 W. Warner Blvd.
Tempe, AZ 85284

via certified US Mail

Re: People v. GTC International Inc.: Pollution Control Board Docket No. 05-32

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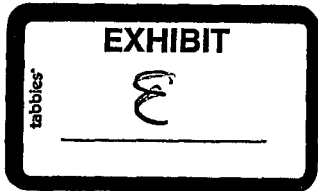
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Sincerely,

Joel Sternstein
Assistant Attorney General
Environmental Bureau North
188 West Randolph Street, 20th Floor
Chicago, Illinois 60601
(312) 814-6986

Cc: Maureen Wozniak, Illinois EPA Division of Legal Counsel, Springfield



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

President and/or Chief
Executive Officer
GTC International, Inc.
1121 W. Warner Blvd.
Tempe, AZ 85284

COMPLETE THIS SECTION ON DELIVERY

A. Signature

[Handwritten Signature]

Agent
 Addressee

B. Received by (Printed Name)

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11/23/01

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4. Restricted Delivery? (Extra Fee) Yes

2. Article Number
(Transfer from service label)

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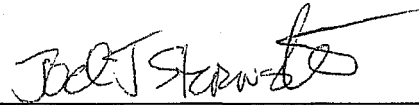
PS Form 3811, August 2001

Domestic Return Receipt

102595-02-M-1540

CERTIFICATE OF SERVICE

I, JOEL J. STERNSTEIN, an Assistant Attorney General, certify that on the 19th day of January 2005, I caused to be served by U.S. Mail the foregoing MOTION TO DEEM ALL MATERIAL FACTS ADMITTED AND MOTION FOR SUMMARY JUDGMENT to the parties named on the attached service list, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.



JOEL J. STERNSTEIN