

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED  
CLERK'S OFFICE

PEOPLE OF THE STATE OF ILLINOIS, )

JUL 31 2003

Complainant, )

STATE OF ILLINOIS  
Pollution Control Board

v. )

No. PCB 03-51

(Enforcement - Air)

DRAW DRAPE CLEANERS, INC., )  
an Illinois corporation, )

Respondent. )

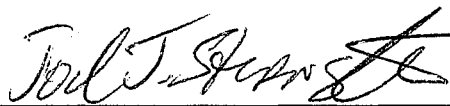
NOTICE OF FILING

To: See attached service list.

PLEASE TAKE NOTICE that the Complainant, PEOPLE OF THE STATE OF ILLINOIS, filed with the Illinois Pollution Control Board, its MOTION FOR LEAVE TO FILE A REPLY and its REPLY TO RESPONDENT'S RESPONSE TO COMPLAINANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT true and correct copies of which are attached hereto and are hereby served upon you.

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

BY:

  
JOEL J. STERNSTEIN  
Assistant Attorney General  
Environmental Bureau  
188 West Randolph, 20<sup>th</sup> Floor  
Chicago, IL 60601  
(312) 814-6986

Dated: July 31, 2003

SERVICE LIST

Ms. Michele Rocawich, Esq.  
Weissberg and Associates, Ltd.  
401 S. LaSalle St., Suite 403  
Chicago, Illinois 60605

Ms. Maureen Wozniak, Esq.  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62702

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED  
CLERK'S OFFICE

JUL 31 2003

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS, )  
 )  
Complainant, )  
 )  
v. )  
 )  
DRAW DRAPE CLEANERS, INC., )  
an Illinois corporation, )  
 )  
Respondent. )

No. PCB 03-51  
(Enforcement - Air)

COMPLAINANT'S MOTION FOR LEAVE TO FILE A REPLY

Complainant, PEOPLE OF THE STATE OF ILLINOIS, ex rel. LISA MADIGAN, Attorney General of the State of Illinois, pursuant to Section 101.500(e) of the Illinois Pollution Control Board's ("Board") Regulations, 35 Ill. Adm. Code 101.500(e), requests that the Board grant it leave to file a Reply to Respondents' Response to Complainant's Motion for Partial Summary Judgment, which Respondents filed on July 18, 2003. Complainant contends that it is filing its Motion for Leave to File a Reply in a timely manner and that it will suffer material prejudice if the Board does not grant it leave to file a Reply.

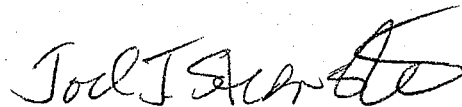
Respectfully submitted,

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

ROSEMARIE CAZEAU, Chief  
Environmental Bureau

BY:



JOEL STERNSTEIN

Assistant Attorney General  
Environmental Bureau

188 West Randolph, 20<sup>th</sup> Floor  
Chicago, IL 60601  
(312) 814-6986

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED  
CLERK'S OFFICE

JUL 31 2003

PEOPLE OF THE STATE OF ILLINOIS, )

Complainant, )

v. )

DRAW DRAPE CLEANERS, INC., )  
an Illinois corporation, )

Respondent. )

STATE OF ILLINOIS  
Pollution Control Board

No. PCB 03-51  
(Enforcement - Air)

COMPLAINANT'S REPLY TO RESPONDENT'S RESPONSE TO COMPLAINANT'S  
MOTION FOR PARTIAL SUMMARY JUDGMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, ex rel. LISA MADIGAN, Attorney General of the State of Illinois, replies to Respondent Draw Drape Cleaners' Response to Complainant's Motion for Partial Summary Judgment. In support of its reply, Complainant states as follows:

INTERROGATORY AS AN AFFIDAVIT

Contrary to Respondent's assertions in its Response to Complainant's Motion for Partial Summary Judgment ("Response"), Complainant did not offer unsworn and unverified statements in its Motion for Partial Summary Judgment ("Motion"). Complainant cited to Respondent's sworn answers to interrogatories. Supreme Court Rule 213(h) states that "[a]nswers to interrogatories may be used in evidence to the same extent as a discovery deposition." A discovery deposition, according to Supreme Court Rule 212(a)(4) may be used "for any purpose for which an affidavit may be used." Therefore, an answer to an interrogatory

may be treated as an affidavit for purposes of a motion for summary judgment. Komater v. Kenton Court Assoc., 151 Ill.App.3d 632, 637; 1502 N.E.2d 1295, 1298 (2d Dist. 1986).

Supreme Court Rule 216(a) permits a party to request an admission of "the truth of any specified relevant fact." Requests to admit are designed to limit the issues at trial and to remove admitted facts from contention. Ellis v. American Family Mutual Insurance Co., 322 Ill.App.3d 1006, 1010, 750 N.E.2d 1287, 1290 (4th Dist. 2001). Admissions made pursuant to a request to admit are considered judicial admissions and are binding upon the party making them. Id. Summary judgment is appropriate when the pleadings, depositions, admissions on file, and affidavits disclose there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Dowd & Dowd, Ltd. v. Gleason, 181 Ill.2d 460, 483, 693 N.E.2d 358, 370 (1998). Complainant appropriately used Respondent's admissions of facts and answers to Complainant's interrogatories in its Motion.

#### COUNTS IV AND V

Respondent contends that because Dryer #2 was identical to Dryer #1 and that Respondent had a permit to rebuild, it believed that Dryer #2 was operating in compliance with the Illinois Environmental Protection Act ("Act"). As Complainant stated in its Motion, Sections 201.142 and 201.143 of the Illinois

Pollution Control Board ("Board") Air Pollution Regulations, 35 Ill. Adm. Code 201.142 and 201.143, provide that no person shall construct and operate any new emission source without first obtaining an operating permit from the Agency.

As stated in the Motion, Dryer #2 is a "new emission source" because it is capable of emitting VOM. Respondent admitted, as noted in Complainant's Motion, to constructing and operating Dryer #2 without first obtaining permits from the Agency. Respondent can not hide behind its assertion that it believed Dryer #2 was operating in compliance with the Act. It is well known that "a defendant is presumed to know the law and that ignorance of the law is no excuse." People v. Acosta, 331 Ill.App.3d 1, 6; 768 N.E. 2d 746, 751 (2d Dist. 2001); People v. Terneus, 239 Ill.App.3d 669, 672; 607 N.E.2d 568, 570 (4th Dist. 1992).

#### COUNT VII

Respondent maintains that a recovery dryer in the proper size was unavailable. As Complainant pointed out in its Motion, Sections 60.620-60.625 of Title 40 of the Code of Federal Regulations, 40 C.F.R. 60.20-60.625, requires that all dryers installed after December 14, 1982 must be solvent recovery dryers. The unavailability of a proper sized dryer does not excuse Respondent from abiding by the law.

### COUNT VIII

Respondent states that it did not perform an admissions test because no commercial emissions test was available at the time. As explained in the Motion, a commercially available test was not necessary. Respondent could have performed the test as outlined in Section 60.624 of Title 40 of the Code of Federal Regulations, 40 C.F.R. 60.624, with a graduated cylinder, a stopwatch, pen and paper, knowledge of simple arithmetic, and time to measure every other dryer load for two weeks. Respondent's possession of a Federally Enforceable State Operating Permit (FESOP) does not excuse its failure to perform the test. Respondent failed to perform the test by its own admission and thereby violated the Act and the Code of Federal Regulations.

### CONCLUSION

WHEREFORE, for the foregoing reasons, Complainant respectfully requests the Board to:

1. Enter an order granting summary judgment for Complainant and against Respondent for Counts IV, V, VII, and VIII in the Complaint;
2. Order that Respondent is liable for penalties for violations of the Act, the Board Air Pollution Regulations, and the Code of Federal Regulations;
3. Assess the Attorney General's fees and costs in this case against Respondent; and



4. Order any other relief it deems just and appropriate.

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

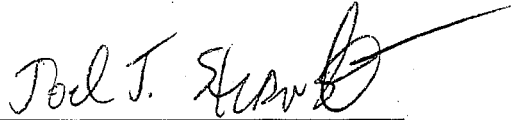
ROSEMARIE CAZEAU, Chief  
Environmental Bureau

BY: 

JOEL STERNSTEIN  
Assistant Attorney General  
Environmental Bureau  
188 West Randolph, 20<sup>th</sup> Floor  
Chicago, IL 60601  
(312) 814-6986

CERTIFICATE OF SERVICE

I, JOEL J. STERNSTEIN, an Assistant Attorney General, do certify that I caused to be mailed this 31<sup>st</sup> day of July 2003, the foregoing COMPLAINANT'S MOTION FOR LEAVE TO FILE A REPLY and COMPLAINANT'S REPLY TO RESPONDENT'S RESPONSE TO COMPLAINANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT 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.

A handwritten signature in black ink, appearing to read "Joel J. Sternstein", is written over a horizontal line.

JOEL J. STERNSTEIN