

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
-vs-	)	
	)	No. 04-7
4832 S. VINCENNES, L.P., an	)	(Enforcement - Air)
Illinois limited partnership, and	)	
BATTEAST CONSTRUCTION COMPANY,	)	
INC., an Indiana corporation,	)	
	)	
Respondents.	)	

TO: See Attached Service List  
(VIA ELECTRONIC FILING)

NOTICE OF FILING

PLEASE TAKE NOTICE that I have filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing Complainant's Motion for Leave to file a Reply to Respondent's Memorandum in Opposition to Complainant's Motion for Summary Judgment, 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 B. Wheeler  
PAULA BECKER WHEELER  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St., 20<sup>th</sup> Flr.  
Chicago, IL 60601  
(312) 814-1511

Date: November 21, 2005

SERVICE LIST

TO: Mr. Oliver Spurlock, Esq./Mr. Gregory Miller  
Attorneys for Respondent  
4832 S. Vincennes, L.P.  
9415 South State Street  
Chicago, Il. 60619

Mr. Zachary Hamilton  
Attorney for Respondent  
Batteast Const. Co., Inc.  
3340 E. Forest View Trail  
Crete, IL. 60417

Mr. Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
100 W. Randolph, Room 11-500  
Chicago, Il. 60601

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Complainant,	)	
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Illinois limited partnership, and	)	
BATTEAST CONSTRUCTION COMPANY, INC.,	)	
an Indiana corporation,	)	
	)	
Respondents.	)	

COMPLAINANT'S MOTION FOR LEAVE TO FILE A REPLY TO 'RESPONDENT'S  
MEMORANDUM IN OPPOSITION TO COMPLAINANT'S MOTION FOR SUMMARY  
JUDGEMENT'

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS ("People"), by LISA MADIGAN, Attorney General of the State of Illinois, and requests that the Illinois Pollution Control Board ("Board") grant leave to file a Reply *instanter* to 'Respondent's Memorandum in Opposition to Complainant's Motion for Summary Judgment', pursuant to 35 Ill. Adm. Code 101.500(e). Said Reply is attached hereto. In support thereof, Complainant states as follows:

1. Section 101.500(e) of the Board Procedural Rules, 35 Ill. Adm. Code 101.500(e), provides, in pertinent part, as follows:

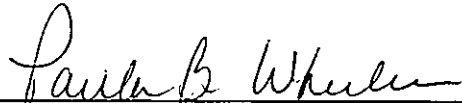
- e) The moving person will not have the right to reply, except as permitted by the Board or hearing officer to prevent material prejudice. ...

2. Complainant would be materially prejudiced if not allowed to file a Reply to Respondent 4832 S. VINCENNES L.P. ("Vincennes") Memorandum in Opposition to Complainant's Motion for Summary Judgment.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board grant the People leave to file *instanter* its Reply to Respondent's Memorandum in Opposition to Complainant's Motion for Summary Judgment against the Respondent, 4832 S. VINCENNES, L.P.

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 Fl.  
Chicago, Illinois 60601  
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 -vs- )  
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 4832 S. VINCENNES, L.P., an ) (Enforcement - Air)  
 Illinois limited partnership, and )  
 BATTEAST CONSTRUCTION COMPANY, INC., )  
 an Indiana corporation, )  
 )  
 Respondents.

COMPLAINANT'S REPLY TO RESPONDENT'S MEMORANDUM IN OPPOSITION TO  
COMPLAINANT'S MOTION FOR SUMMARY JUDGEMENT

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS ("People"), by LISA MADIGAN, Attorney General of the State of Illinois, and states in Reply to Respondent's Memorandum in Opposition to Complainant's Motion for Summary Judgment against 4832 S. VINCENNES, L.P. ("Vincennes"), as follows:

PRELIMINARY BACKGROUND

On October 17, 2005, People filed its Motion for Summary Judgment against Respondent Vincennes. Vincennes timely filed its Memorandum in Opposition to Complainant's Motion for Summary Judgment on November 7, 2005, which was received by the Complainant on November 8, 2005.

ARGUMENT

Vincennes' Memorandum in Opposition is flawed in many respects, but the most important are that several allegations are made without supporting affidavits and several documents are

attached without any authentication as business records or otherwise, and, therefore such assertions and documents should be disregarded by the Board in its determination of whether to grant the Complainant's Motion for Summary Judgment.

However, if the Board did want to consider the documents attached to Respondent's Memorandum, although not properly presented before it, the Board would find that these documents also support the Complainant's Motion for Summary Judgment. Respondent's Exhibit A was part of the Complainant's Motion also. Group Exhibit B purports to be Minutes of Construction Meetings held by the co-Respondent, Batteast Construction Company, Inc. Said documents were never produced in discovery or they would have been attached to Complainant's Motion with the proper authentication. The documents show that the presence of asbestos at the site was known well before the Illinois Environmental Protection Agency ("Illinois EPA") made any inspections. The documents also show several people were copied on these documents, using initials, which may or may not have been Mr. Miller, the owner's representative, or some other representative of the owner.

Respondent's Exhibit D purports to be a narrative by a City of Chicago inspector. If the Board decides to consider this document which is unsupported by affidavit, it should note that the writer states that the site was not secured at the time of

his inspection, which was February 5, 2002. This is days after the Illinois EPA was on the premises, and weeks after the asbestos was discovered. Even after being instructed by the City and the Illinois EPA, the Respondent did not get it properly secured.

Respondent further argues that Complainant's supporting affidavits were not prepared by experts showing the presence of asbestos. No experts are necessary as the Respondent has clearly admitted in its Answer that asbestos was on the premises.

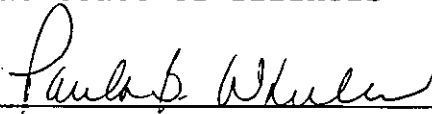
Respondent also argues that the Minutes of the Construction Meetings, Meeting #4, (which are unsupported by affidavit, and, as such, are hearsay), state that the co-Respondent would close down the job as a result of materials testing positive for asbestos. Actually, the Minutes show that the job would be closed during the time of the asbestos abatement. Respondent's previous admissions of fact and deposition statements show that workers were on the premises at least through January 31, 2002, and that the job was not shut down until the City of Chicago issued a stop work order on February 5, 2002.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully states that there is no genuine issue of material fact, only the Respondent's Vincennes' arguments that attempt to obfuscate the facts, whether or not the Board considers the Respondent's Memorandum with its attached improper documents.

Complainant has clearly demonstrated Respondent's violations of the Act, the Board Air Pollution Regulations, and NESHAPS regulations. Complainant, PEOPLE OF THE STATE OF ILLINOIS therefore ask that the Board grant its Motion for Summary Judgment, award the relief requested in its Motion for Summary Judgment, and take such other action as the Board believes to be appropriate and just.

Respectfully submitted,

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

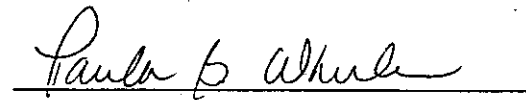
By: 

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



CERTIFICATE OF SERVICE

I, PAULA BECKER WHEELER, an attorney, do certify that I caused to be served this 21st day of November, 2005, the foregoing Complainant's Motion for Leave to File a Reply to Respondent's Memorandum in Opposition to Complainant's Motion for Summary Judgment and Notice of Filing upon the persons listed on the attached Service List by depositing same in an envelope, by first class postage prepaid, with the United States Postal Service at 188 West Randolph Street, Chicago, Illinois, at or before the hour of 5:00 p.m.

A handwritten signature in cursive script, reading "Paula b Wheeler", is written over a horizontal line.

PAULA BECKER WHEELER

Date: November 21, 2005