

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.)
)
 EDWARD W. FISHER, RHONDA L.)
 FISHER and DEM/EX GROUP, INC.,)
 an Illinois corporation,)
)
 Respondents.)

PCB No. 13-3
(Enforcement - Land)

NOTICE OF ELECTRONIC FILING

To: See Attached Service List


PLEASE TAKE NOTICE that on October 31, 2012, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, c/o John.T. Therriault, Assistant Clerk, James R. Thompson Center, 100 W. Randolph St., Ste. 11-500, Chicago, IL 60601, a MOTION TO THE HEARING OFFICER TO DEEM COMPLAINT ALLEGATIONS BE TAKEN AS ADMITTED PURSUANT TO ILL. ADM. CODE 103.204-(d), a copy of which is attached hereto and herewith served upon you.

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

BY: 
KELLY O. PHELPS
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: October 31, 2012

CERTIFICATE OF SERVICE

I hereby certify that I did on October 31, 2012, cause to be served by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Springfield, Illinois, a true and correct copy of the following instruments entitled NOTICE OF ELECTRONIC FILING and MOTION TO THE HEARING OFFICER TO DEEM COMPLAINT ALLEGATIONS BE TAKEN AS ADMITTED PURSUANT TO ILL. ADM. CODE 103.204-(d) upon the persons listed on the Service List.


KELLY O. RUELPS
Assistant Attorney General

This filing is submitted on recycled paper.

SERVICE LIST

Michael R. Fricke
David L. Cover
Cover, Evans & Fricke, LLP
Twin Towers Plaza
456 Fulton Street, Ste. 203
Peoria, IL 61602-1220

Dem/Ex Group, Inc.
c/o Edward Fisher, President
7841 Warner Road
Manito, IL 61546

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.) **PCB No. 13-3**
)
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) **(Enforcement-Land)**
 EDWARD W. FISHER, RHONDA L. FISHER,)
 and DEM/EX GROUP, INC.,)
 (an Illinois corporation),)
)
 Respondents.)

**MOTION TO THE HEARING OFFICER TO DEEM COMPLAINT ALLEGATIONS BE
TAKEN AS ADMITTED PURSUANT TO ILL. ADM. CODE 103.204(d)**

The PEOPLE OF THE STATE OF ILLINOIS, by their attorney, LISA MADIGAN, Attorney General of the State of Illinois, request that the Hearing Officer, in accordance with authority granted under Section 101.502(a) of the Board's regulations, 35 Ill. Adm. Code 101.502, deem all material allegations in the Complaint relating to Respondent DEM/EX GROUP, INC. be taken as admitted by operation of law, pursuant to Board rule 35 Ill. Adm. Code 103.204, and in support thereof state:

1. The Hearing Officer has the authority to rule on all motions that are not dispositive of the proceeding pursuant to Section 101.502(a) of the Board's regulations, 35 Ill. Adm. Code 101.502(a).
2. Sections 103.204(d) and (e) of the Board's regulations, 35 Ill. Adm. Code 103.204(d) and (e) state 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.

e) If the respondent timely files a motion under Section 103.212(b) or 35 Ill. Adm. Code 101.506, the 60-day period to file an answer described in subsection (d) of this Section will be stayed. The stay will begin when the motion is filed and end when the Board disposes of the motion.

3. The People filed their Complaint which was received by the Clerk on July 16, 2012.
4. Notice of Electronic Filing and the Complaint were properly served on the Respondents and their attorney, Michael R. Fricke by certified mail sent on July 13, 2012. The Notice which is part of the record included the language required by Section 103.204(f) of the Board's rules, 35 Ill. Adm. Code 103.204(f) and that language specifically admonished Respondents that failure to answer the Complaint within 60 days would mean that all allegations in the Complaint would be taken as if admitted.
5. On July 26, 2012, Hearing Officer, Carol Webb ordered a status conference be held on August 27, 2012, which was held and in which attorney Michael R. Fricke participated.
6. On August 29, 2012, Attorney Michael R. Fricke entered his appearance in this matter on behalf of Respondent's Edward W. Fisher and Rhonda L. Fisher.
7. No attorney has entered an appearance on behalf of DEM/EX GROUP, INC.
8. More than 60 days have elapsed since Respondents have received the Complaint and Respondents have failed to answer the Complaint or otherwise file a motion as required by Sections 103.204(d) and (e) of the Board's regulations, 35 Ill. Adm. Code 103.204(d) and (e).
9. On October 29, 2012, Hearing Officer Webb conducted a status conference wherein Respondents, EDWARD W. FISHER and RHONDA L. FISHER, by their attorney, stipulated that the allegations in the Complaint were admitted. No attorney appeared for DEM/EX GROUP, INC.

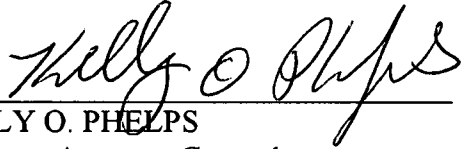
WHEREFORE, the PEOPLE OF THE STATE OF ILLINOIS pray that the Hearing Officer deem the material allegations in the Complaint relating to Respondent, DEM/EX GROUP, INC. be admitted by operation of law pursuant to Section 103.204(d) of the Board's rules, 35 Ill. Adm. Code 103.204(d).

Respectfully Submitted,

Illinois Environmental Protection Agency
Ex rel. LISA MADIGAN,
Attorney General
of the State of Illinois

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

By:


KELLY O. PHELPS
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Dated: October 31, 2012