

2000

Lloyd A. Fry Company v. : Petition for Rehearing

Utah Supreme Court

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Rex J. Hanson; Hanson, Wadsworth and Russon; Attorney for Appellant.

Vernon B. Romney; Attorney General; William C. Quigley; John Spencer Snow; Assistant Attorneys General; Attorneys for Respondent.

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IN THE SUPREME COURT OF THE STATE OF UTAH
BRIGHAM YOUNG UNIVERSITY
J. Reuben Clark Law School

In the Matter of

LLOYD A. FRY COMPANY,

Appellant.

Case No. 13980

PETITION FOR REHEARING

Appeal from the Decision and Orders
of the Utah Air Conservation Commit-
tee, Utah State Division of Health

REX J. HANSON
HANSON, WADSWORTH & RUSSON
702 Kearns Building
Salt Lake City, Utah 84101

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Attorney General

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Assistant Attorneys General
236 State Capitol Building
Salt Lake City, Utah 84114

ATTORNEYS FOR RESPONDENT

FILED

FEB 23 1976

TABLE OF CONTENTS

ARGUMENT

POINT I: THE COURT DID NOT FULLY CONSIDER THE CONSTITUTIONALITY OF THE AIR CONSERVATION ACT. -----	2
POINT II: THE DECISION DID NOT ASSESS THE EVIDENCE AND THE WEIGHT TO BE GIVEN IT IN THE LIGHT OF THE UNCONTROVERTED FACTS -----	9
POINT III: THE PROCEDURE SET OUT IN THE ACT DOES NOT SAFEGUARD THE RIGHT OF A PERSON ACCUSED OF VIOLATING ITS REGULATIONS TO A FAIR HEARING. THERE IS INHERENT PREJUDICE AND BIAS IN THE ADMINISTRATIVE PROCESS CONDUCTED IN THIS INSTANCE -----	16
CONCLUSION -----	17

CASES CITED

	<u>Page</u>
Bortz Coal Co. v. Air Pollution Com., (1971, Pa.Cmwlth), 1 ELR 20393 -----	14
Huntington v. Attrill, 146 U.S. 657, 13 S.Ct. 224 -----	6
Johnstone v. Daly City, District Court of Appeals 1st District, Division, California, 319 P.2d 756 (1958) -----	8
State v. Lloyd A. Fry Roofing Co., 9 Or. A189, 495 P.2d 751, 51 ALR3d 1007 (1972) -----	13
St. Lewis v. Eskridge, Missouri, 486 S.W.2d 648 (1972) -----	9
Vlandis v. Kline, 412 U.S. 441 -----	16

STATUTES CITED

Utah Code Annotated, Sec. 26-24-2 -----	4
Utah Code Annotated, Sec. 26-24-2(1) -----	7
Utah Code Annotated, Sec. 26-24-2(3) -----	15
Utah Code Annotated, Sec. 26-24-11(1)(a) -----	2, 3
Utah Code Annotated, Sec. 26-24-13(1)(a) -----	4
Utah Code Annotated, Sec. 26-24-16 -----	4

OTHER AUTHORITIES

Utah Code of Air Conservation Regulations	
Section 1.1.3	7
Section 3.2	1
Section 3.2.1	9
Section 3.2.6(d)	7
2 Am.Jur.2d Sec. 391	8
36 Am.Jur.2d Forfeitures & Fines, Sec. 8, p. 615	7
51 ALR3d 1038, 1039	14

IN THE SUPREME COURT OF THE STATE OF UTAH

In the Matter of

LLOYD A. FRY COMPANY,

Appellant.

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Civil No. 13980

PETITION FOR REHEARING

The appellant, Lloyd A. Fry Roofing Company, respectfully petitions the Court for a rehearing on the decision rendered on December 30, 1975, affirming the findings of the Utah Air Conservation Committee that emissions from Fry's plant violated Section 3.2 of the Code of Air Conservation Regulations providing that emissions shall be of a shade in density no darker than a No. 2 Ringelmann Chart (40% black), upon the following grounds:

1. The Court did not fully consider the question of the constitutionality of the Air Conservation Act.
2. The decision does not correctly assess the facts, nor does it apply the standard necessary for the Air Conservation Committee to prove the alleged violation.
3. The procedure set out in the Act does not safeguard the right of a person accused of violating its regulations to a fair hearing. There is inherent prejudice and bias in the administrative process conducted in this instance.

ARGUMENT

POINT I

THE COURT DID NOT FULLY CONSIDER THE QUESTION OF THE CONSTITUTIONALITY OF THE AIR CONSERVATION ACT.

The Statute is unconstitutional on its face for the following reasons: (a) It permits an administrative agency to impose a criminal penalty for an alleged violation of its regulations without the necessity of compliance with constitutional standards of proof in determining whether a violation occurred; and (b) the procedure followed by the examining committee in conducting a hearing as to whether a violation has occurred is inherently unfair to the accused.

We have no quarrel with the statement in the opinion that under Section 26-24-11(1)(a) the procedure under which the Air Conservation Committee (hereinafter called "Committee") determines whether a violation of its regulations has occurred, is administrative in nature; however, it is of vital importance that due consideration be given to the constitutional ramifications of the original procedure by which the Committee makes a determination, the method of the determination, and its effect.

Section 26-24-11(1)(a), the procedure by which the Committee determines a person is in violation of its regulations, is set out as follows:

Violations - Notice - Hearings - Orders -
Variance - Exceptions. - (1)(a) Whenever the
executive secretary has reason to believe that a
violation of any provision of this act or any

rule, regulation, or standard issued under it, has occurred, he may cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of this act or rule, regulation, or standard alleged to be violated, and the facts alleged to constitute the violation and may include an order that necessary corrective action be taken within a reasonable time. Any such order shall become final unless, no later than twenty days after the date the notice and order are served, the person or persons named therein request in writing a hearing before the committee. Upon such request, the committee shall hold a hearing. In lieu of an order, the executive secretary may require that the alleged violator or violators appear before the committee for a hearing at a time and place specified in the notice and answer the charges complained of, or the committee may initiate an action pursuant to section 26-24-13.

It is clear from this section that the executive secretary of the Committee, a hearing examiner of the Committee, or any committee member as hearing examiner, can make a decision which, in effect, results in a final order of violation. The decision from which this Petition arises held that the moving party, the Air Conservation Committee, or anyone charging a violation of this Act, need not prove that charge beyond a reasonable doubt. However, a review of the entire Air Conservation Act, in its entirety, compels the conclusion that in order for the Act to be constitutional, the Committee making a charge that a violation exists under this Act, or the rules, regulations, etc. thereunder, must prove that charge beyond a reasonable doubt in order to establish guilt.

The "constitutional problem" becomes apparent in the Committee's decision pursuant to Section 26-24-11(1)(a),

when considered in conjunction with Section 26-24-13(1)(a), which states:

Any person who violates any provision of this Act, or any rule, regulation, order (other than an order requiring compliance with an implementation plan), or standard in force under this Act, other than Section 26-24-16, or who causes or permits to be caused air pollution as defined in Section 26-24-2 of any air resource of the state, shall be guilty of an offense and subject to a fine of not more than \$10,000 for each day of violation.

The Act provides that the Committee can determine under an "administrative hearing procedure" whether or not a "violation" has occurred. Under Section 26-24-13, if a violation has occurred, the person in violation is "guilty of an offense and subject to a fine of not more than \$10,000 for each day of violation." The wording of this Statute clearly sets out a criminal penalty. Granted, the Statute is vague and indefinite; however, if possible, the legislative intent must be taken directly from the four corners of the Statute in order to comprehend its full force and effect. Here, the Legislature has provided that if a violation is determined, which, if the decision of the Supreme Court is allowed to stand, can be determined by an administrative agency, then the violator is "guilty of an offense and subject to a fine of not more than \$10,000 for each day of violation." The Statute goes on to increase the amount of fine from \$10,000 to \$25,000 and even \$50,000 for each day of violation under a determination made by an administrative agency without the constitutional guarantee that the Committee has the burden

of proving the offense beyond a reasonable doubt or even by a preponderance of the evidence. There can be no doubt that the effect of this Statute is penal in nature. The title of the Statute: "Violations -Penalties- Rights of civil action not impaired -Injunctive relief." further indicates its criminal aspect. The constitutionality of this Statute would be no less in question if the Statute were to say "guilty of a misdemeanor" or "guilty of a felony" instead of "guilty of an offense." In effect, the Air Conservation Act allows an administrative agency to circumvent all constitutional rights inherent in a criminal prosecution, i.e., proof beyond a reasonable doubt, trial by jury, and especially due process of law, and allows it to make a determination of whether or not a violation of law has occurred which results in the enforcement of a criminal penalty without regard to the constitutional rights of the citizens involved, including the right to a jury trial, which did not occur in this instance (Tr. 5).

No one faults the laudable objective of seeking to maintain substantially clean air. However, before liberties of individuals are violated and loss of property results, it is constitutionally incumbent upon the moving party to establish, at least beyond conjecture, that a violation of law has occurred sufficient to warrant the implementation of penalties similar to those provided by the Air Conservation Act.

As stated in the Supreme Court case of Huntington v. Attrill, 146 U.S. 657, 13 S.Ct. 224 (1892). the test as to whether a statute is penal, according to the United States Supreme Court, "is not by what the name the statute is called by the legislature or the courts of the state in which it was passed, but whether it appears to the tribunal which is called upon to enforce it to be, in its essential character and effect, a punishment of an offense against the public, or a grant of a civil right to a private person." It is clear that the effect of the Air Conservation Act is penal in nature. It provides for a penalty, it holds that an individual in violation is "guilty of an offense," and thereafter subject to a fine of not to exceed \$10,000 per day. Certainly, the language used in the Statute sheds light on the legislative intent that the effect of the Statute is to punish the "violation" for an offense against the public. Certainly, an administrative committee has the right and duty to formulate regulations to carry out the objectives of a statute, but to permit the committee in this instance to set up rules, hold a hearing on whether a person has violated the rules, find the accused guilty, and then levy a criminal penalty, i.e., a fine of \$10,000 a day, is analogous to permitting the IRS to charge a taxpayer for failure to pay taxes, hold a hearing, find him guilty, and levy a penalty, without ever proving the accused's guilt in a court proceeding.

Presently, there is a criminal action pending against

the appellant in the Bountiful City Court (Exhibit A). Note that the action was quiescent until the date of this decision, and has now been reactivated. Query: Can the decision of the Committee be used as evidence in this criminal proceeding? If an additional action can also be brought against Fry, and the determinations made by the Committee holding the appellant in violation admitted as evidence of guilt, certainly Fry has suffered a violation of "due process." In addition, the Court is invited to consider that statutes imposing fines and penalties are penal in nature and have, and always will be strictly construed. 36 Am.Jur.2d Forfeitures and Fines, Section 8, p. 615.

The statement in the opinion that "Fry's claim that the burden of proof was upon the state to prove that the plume did not contain uncombined water is erroneous," misconstrues the definition of a contaminant as set out in the Statute, and the Code of Air Conservation Regulations. 1.1.3 of the Code states:

Air contaminant means any particulate matter or any gas, vapor, suspended solid or any combination thereof, excluding steam and water vapors (Section 26-24-2(1), UCA, 1953, as amended).

3.2.6.(d) states:

An emission failing to meet the standard because of the effect of uncombined water shall not be in violation.

This does not mean that uncombined water is an exception to the regulation, but can only mean that water vapor is not a contaminant. Certainly, the committee which asserts a

violation has the burden of proving that a plume which is observed to be more than 40% opaque, equivalent to No. 2 Ringelmann, is not opaque because of water vapor, which is not a contaminant. A plume of pure steam (water vapor) can exceed 40% opacity and is not a violation. The decision seems to indicate that if an inspector reads a plume as in excess of 40% opacity, there is a presumption of violation irrespective of whether the plume contains uncombined water vapor. There is no statement in the decision that the Committee has the burden of proving the charges by a preponderance of the evidence. Even where a criminal penalty is not involved, the principle is well established that a moving party who asserts a proposition has the burden of proving the assertion by a preponderance of the evidence. 2 Am.Jur.2d, Sec. 391 states:

It is generally held that the proper allocation of the burden of proof is among the essential rules of evidence which must be observed in adjudications by administrative agencies. As in court proceedings, the burden of proof, apart from statute, is on the party asserting the affirmative of an issue before an administrative tribunal.

This is usually the claimant, complainant, or applicant, but the party resisting a claim may have the burden of proving a bar to such claim, such as a statutory exception, and, while the burden of proof never shifts, the burden of proceeding with the presentation of evidence does shift.

In disciplinary administrative proceedings, which in some aspects are analogous to this situation, the burden of proof is upon the party asserting the affirmative. Johnstone vs. Daly City, District Court of Appeals, First District,

Division 2, California, 319 P.2d 756 (1958) is illustrative of the general rule. This case involved a mandamus proceeding to compel a city manager to restore petitioner to position of public inspector. The Court said:

In disciplinary administrative proceedings, burden of proof is upon party asserting the affirmative and guilt must be established to a reasonable certainty and cannot be based on surmise or conjecture, suspicion or theoretical conclusions, or uncorroborated hearsay.

The case of St. Lewis vs. Eskridge, Missouri, 486 S.W.2d 648 (1972) cited in the opinion in opposition to Fry's contention that the burden is on the Committee to prove that the plume did not contain uncombined water vapor, is not in point. That decision involved a prosecution under a criminal statute, in which the defendant was convicted of violating an "air pollution control ordinance." The appellate court held that information alleging defendant had violated the ordinance was not defective for failure to allege that the emission was not due to "presence of uncombined water." Obviously, this case involved a pleading question on whether the prosecution in the information was required to negate an exception to the ordinance. Again, the presence of uncombined water vapor is not an exception to Section 3.2.1 of the Code, because water vapor is not a contaminant.

POINT II

THE DECISION DID NOT ASSESS THE EVIDENCE AND THE WEIGHT TO BE GIVEN IT IN THE LIGHT OF THE FOLLOWING UNCONTROVERTED FACTS.

The smoke school maintained by the Committee, trained

the students to read smoke plumes from an incomplete combustion process under inside controlled conditions at a distance of ten feet. The students' readings were compared with equivalent opacity on a Ringelmann chart. No training was given on wet plumes (white), and there was and is no other plume in the State of Utah emitted as a result of a process similar to Fry. The training for reading a wet plume, according to Alvin Rickers, who was in charge of instruction at the smoke school, was for the student to observe a couple of situations in the field. His testimony is quoted verbatim as follows:

Q. Now, what actual training do you give them which would enable them to determine when the water vapor is dissipated out of a wet plume?

A. At this school we have not come up with a means to do this from our smoke generator. Anything that goes past that--first of all, we want to stay as objective as we can in our smoke school and, therefore, we have to use our meter for our authority on what's being emitted. If we are to inject water into the system and it was not all condensed when it went by that meter, then we wouldn't know what we have. Consequently, we do not do that in that portion of the school.

Q. Well, just what training do you give them in helping them to determine when a water vapor in a plume is dissipated from the plume?

A. For our enforcement personnel, and these are the people that are going out continuously on this type of thing, before they are released to make any contact by themselves with the public. In other words, before they are given that authority, they go out with experienced people who give them some training and it doesn't take much training. It's just a matter of showing them a couple of situations and after that it's fairly easily recognized.

Q. Of course, the distance the plume travels before the water vapor is dissipated from the

plume, again, depends upon the weather conditions, the amount of humidity in the air and a number of other things, doesn't it?

A. Yes.

Q. Can you tell me, were you taken out to be trained in determining at what point the water would be dissipated from the water plume; did somebody take you out?

A. Yes, A former employee of the organization took me out.

Q. And, how many times were you taken out?

A. I only went out with him once. That was all that was needed.

Q. Well, I didn't ask you that. You only went out with him once. Just answer my question, if you will.

A. Okay.

Q. And, where did you make this training?

A. This was out at Kennecott Cooper Corporation.

Q. Does Kennecott Copper Corporation have the same kind of processes that Fry Roofing has?

A. No.

Q. Well, then, prior to the time you made your evaluation you had never had any training in determining when the water vapor became separated from the plume so far as the processes similar to the Fry Roofing Company is concerned?

A. No.

Q. Now, as a matter of fact, there isn't any other process in the State of Utah where felt is saturated with asphalt as is done in the Fry Roofing plant, is there?

A. Not that I know of.

Q. That's the only one?

A. It's the only one.

The Committee's witnesses conceded that "subjective variations" in readings could range from 7% or less (Tr. 72). In the HEW study introduced into evidence as Exhibit 3 on page 28, are the results of evaluation of white training plumes by six inspectors, indicating a wide range of subjective variation.

It was conceded by the executive director of the Committee, Grant Winn, that the fact that there isn't a definite break in the plume at the point where the water vapor dissipates, requires a subjective estimate by the viewer as to where the water vapor evaporates (Tr. 30). The evidence was uncontroverted that the emission from the Fry stacks is of a higher temperature than the ambient surrounding air. It doesn't require evidence to establish, and the court can judicially notice that upon contact with the outside atmosphere, the edges of the plume would cool first, condensing the moisture, and the cooling process would continue towards the center of the plume until all of the moisture was dissipated, which would have to be a gradual process, the rapidity of which would depend upon existing atmospheric conditions: temperature, humidity, wind and barometric pressure. The testimony that there is an abrupt break in the plume where all the water vapor is dissipated is incredible and not probative evidence (Tr. 26-30).

In answer to a question from the chairman of the

examining committee, the witness Rickers testified that they instructed students, when taking a reading, to have the sun to their back, that they be perpendicular to the effluent stream, and that they be two and one half stack lengths away from the stack when the observation was made (Tr. 100). The evidence was conclusive that there was no compliance with uniform guidelines by the inspectors in taking the readings, some made in observation, some made at different positions and for different lengths of time (See appellant's brief, pp. 32-35). It is worthy of note that the inspectors did not use a Ringelmann Chart on the site for comparison in reading the Fry plume, but compared the opacity of the plume with their memory of the designated shades of opacity shown on the chart. That their memory of the opacity shades shown on the Ringelmann Chart tends to become inaccurate is indicated by the requirement that the inspectors' "eye-balls" be recalibrated every six months. Some of the inspectors observed a more dense plume from the east stack than the west stack which was impossible as all of the moisture driven out of the felt by the impact of the hot asphalt was collected in an overhead steel hood and could only be emitted from the west stack (Tr., Vol. II, p. 134), casting further doubt on the reliability of those readings.

The decision cites the case of State vs. Lloyd A. Fry Roofing Co. 9 Or. A189, 495 P.2d 751, 51 ALR3d 1007 (1972) for authority that the weight to be accorded the testimony of the smoke readers and conflicting testimony of the experts

on the accuracy and reliability of smoke reading was within the prerogatives of the fact finders. It is interesting to note that this was a court decision (not an administrative hearing) in which Fry was found guilty of violating air pollution rules. That case involved reading a "wet plume."

Objections were made by Fry that the testimony of the "smoke readers" was inadmissible because they had no training in reading a wet plume. The testimony was admitted because the readings were 80% opacity, double the 40% opacity limitation. The Court felt that the high reading of 80% eliminated the effect of subjective error. The Court said:

The training CWAPA gives its smoke readers as to wet plumes may well not be optimum, and this presents a close question concerning the admissibility of Bispham's and McDonald's testimony. Since they testified that defendant's plume obscured 80 per cent or more of the background (or, in other words, more than twice the amount of background obscuration to constitute a violation), and since there was no showing that the amount of visible water in defendant's plume could have such a substantial impact on their readings, we resolve this close question in favor of the state. We agree with both trial judges in their conclusion that the variables revealed by these records go to the weight and not the admissibility of Bispham's and McDonald's testimony.

In this instance there was no reading higher than 60%, one of which was made on the emission from the east stack.

In 51 ALR3d 1038, 1039, the editor quotes the decision of Bortz Coal Co. vs. Air Pollution Com. (1971, Pa. Cmwlth) 1 ELR 20393, as follows:

Pointing out that the expert used none of the available instruments for testing smoke emissions or falling particulate matter and made no stack tests, the court concluded that if employees of the commission were allowed to determine that smoke a particulate matter emissions were in violation of regulations, based solely upon visual observations, then there would be really no need to have standards and regulations at all. Visual tests and observations are not, the court said, adequate evidence of violation, where recognized scientific tests are available. Expressing familiarity

with the Ringelmann Smoke Chart, the court expressed puzzlement as to why such an inexpensive method of testing was not used and why an engineer employed by the Commonwealth would not be equipped with such an inexpensive device. A citizen whose business is about to be destroyed by an abatement order, the court declared, is certainly entitled to that much consideration (the use of test instruments) in the establishment of his alleged violation.

The above language seems appropriate in this situation.

There was no evidence that the emission from the Fry plant, including the particulate, was a contaminant as defined in the statute. 26-24-2(3) provides:

"Air pollution" means the presence in the ambient air of one or more air contaminants in such quantities and duration and under conditions and circumstances as is or tends to be injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or use of property, as determined by the standards, rules, and regulations adopted by the air conservation committee.

The record is absent of any evidence that the emission was or tended to be "injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or use of property."

There was no evidence of any complaint from any individual concerning a problem with the Fry emissions. The plant is located in the North Salt Lake industrial area, and reference to the photographs, Ex. 15 and 15A, certainly do not show the type of emission which would have an adverse effect on people or the environment, particularly when the evidence was undisputed that the Fry process does not involve combustion, and is composed of 97.7% water and 2.3% asphalt.

Granted, whether an emission is a contaminant is to be determined by standards, rules and regulations adopted by the Air Conservation Committee. But those standards, rules and regulations must have a factual basis to meet constitutional requirements. See Vlandis v. Kline, 412 U.S. 441, cited in appellant's brief.

Again, we say that the definitions of air pollution as set out in the Utah Statute negates the contention that opacity is the equivalent of air pollution.

POINT III

THE PROCEDURE SET OUT IN THE ACT DOES NOT SAFEGUARD THE RIGHT OF A PERSON ACCUSED OF VIOLATING ITS REGULATIONS TO A FAIR HEARING. THERE IS INHERENT PREJUDICE AND BIAS IN THE ADMINISTRATIVE PROCESS CONDUCTED IN THIS INSTANCE.

The smoke readers are employees of the State of Utah and are directly related to the Air Conservation Committee through the Department of Health. The charges and alleged violations are then analyzed by the Air Conservation Committee themselves, who are charged by law to enforce their own regulations. Whenever a hearing is held on the matter, it is supervised by a legal advisor who, in this case, was John Spencer Snow, who participated in writing the brief on appeal. We do not contend that Mr. Snow did not attempt to decide questions of law in an impartial manner; however, he is an advocate, and it is most unusual for him to act as impartial legal advisor, to then participate in writing the Committee's appeal brief and then argue it. From the very beginning, this was not an adversary proceeding, and it

could not be under the circumstances.

The hearing was attended by Federal EPA employees, who, although they had no official interest in the outcome, were constantly communicating with members of the hearing committee at times while the hearing was in process. There was also continuous communication between the members of the hearing committee and its witnesses, which disrupted the hearing to the extent that at one point it was necessary for Fry's counsel to make an objection (Tr., Vol. 1, p. 127), which was sustained by the legal advisor. The transcript clearly shows that the Committee took the position that the burden was on Fry to prove that it was not in violation, which was a violation of due process.

CONCLUSION

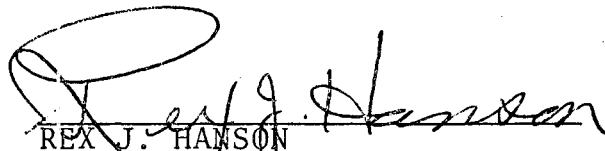
Everyone is in favor of "clean air" and of reasonable regulation of industry to obtain that objective. However, we do live in an industrial age, which has given this nation the highest standard of living enjoyed by any country in the world.

If the Fry plant can be closed down, based upon the type of subjective testimony given in this case, without regard to the requirements of constitutional standards of proof, the precedent established will certainly encourage a depressing effect on existing and the future expansion of industry in this State, contrary to the public interest.

We submit the decision should be withdrawn and a rehearing granted.

Respectfully submitted,

HANSON, WADSWORTH & RUSSON

A handwritten signature in dark ink, appearing to read "Rex J. Hanson", is written over the printed name.

REX J. HANSON
Attorney for Appellant
702 Kearns Building
Salt Lake City, Utah

CERTIFICATE OF DELIVERY

HAND-DELIVERED a copy of the foregoing Petition for Rehearing
this 23rd day of February 1976, to John Spencer Snow, Assistant
Attorney General, 236 State Capitol Building, Salt Lake City,
Utah.

William F. Ham

EXHIBIT "A"

January 6, 1976

Rex J. Hanson
Attorney at Law
702 Kearns Building
Salt Lake City, Utah

Re: State -vs- Lloyd A. Fry Roofing U-722

Dear Mr. Hanson:

Please be advised that arraignment in the above matter has been scheduled for Monday, January 19, 1976 at 2:00 P.M. in the Bountiful City Court, 745 South Main, Bountiful, Utah.

You will be required to appear with your client at that time.

If you have any questions, please contact the Court.

BOUNTIFUL CITY COURT

Deputy Clerk

cc

I do hereby certify that the foregoing is a full true and correct copy of the LETTER TO APPEAR on file in the Bountiful City Court.

Arden F. Jenson, Clerk

By Janet Davis Deputy Clerk

Janet Davis

IN THE CITY COURT OF BOUNTIFUL, DAVIS COUNTY

STATE OF UTAH

STATE OF UTAH

Plaintiff,

vs.

LLOYD A. FRY ROOFING COMPANY,

Defendant.

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SUMMONS

U-722

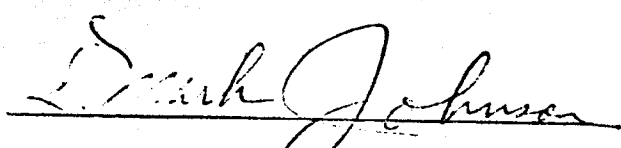
STATE OF UTAH)

COUNTY OF DAVIS) SS

THE STATE OF UTAH TO LLOYD A FRY ROOFING COMPANY:

You are hereby summoned to appear before me at my Court in Bountiful, Davis County, State of Utah, on the 6th day of August 1973, at 2:00 o'clock, to answer a charge made against you upon the complaint of Richard L. Harvey, for violating the Visible Emissions Standards of the Utah State Division of Health Code of Air Conservation Regulations, in violation of Utah Code Annotated 26-24-5 and 26-15-5.

Dated at Bountiful, Davis County, State of Utah, this 26 day of July, 1973.


S. Mark Johnson, Judge

Defendant's Address:

Process Agent: C. T. Corporation System
175 South Main
Salt Lake City, Utah

I do hereby certify that the foregoing is a full true and correct copy of the SUMMONS on file in the Bountiful City Court.

Arden F. Jenson, Clerk

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By Janet Davis, Deputy Clerk

IN THE CITY COURT OF BOUNTIFUL, DAVIS COUNTY

STATE OF UTAH

STATE OF UTAH :
Plaintiff, :
vs. : COMPLAINT
LLOYD A. FRY ROOFING COMPANY : *U-122*
Defendant. :

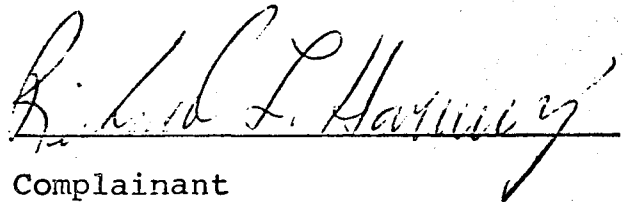
On this *26* day of July, 1973, before me, S. Mark Johnson, Judge of the Bountiful City Court, personally appeared Richard L. Harvey, who being duly sworn by me on his oath, complains and says that:

1. The Lloyd A. Fry Roofing Company, is a Delaware Corporation, General Offices located in Illinois, registered to conduct business within the State of Utah, with a facility operating in Woods Cross, Davis County, Utah;


2. That Richard L. Harvey is the Administrator of Environmental Health Services for Davis County, Utah, and as such has authority to investigate violations of the Utah Air Conservation Act.

3. That on June 27, 1972; July 6, 1972; July 13, 1972; July 17, 1972; July 27, 1972; August 3, 1972; August 7, 1972; August 10, 1972; August 15, 1972; August 31, 1972; September 5, 1972; September 14, 1972; September 21, 1972; October 2, 1972; November 22, 1972; December 27, 1972; January 23, 1973; and February 20, 1973, at Woods Cross, County of Davis, State of Utah, the Lloyd A. Fry Roofing Company did on each date specified commit the offense of violating the Visible Emissions Standards of the Code of Air Conservation Regulations, Part Three (3) of the Utah State Division of Health Code of Air Conservation Regulations, enacted under authority of Utah Code Annotated Sections 26-24-5

and 26-15-5, as follows: That on the above dates the Lloyd A. Fry Roofing Company caused the emission of an effluent into the atmosphere which was of shade or density darker than a No. 2 Rengelmann Chart (40% Black) or an equivalent opacity, for which offenses the Lloyd A. Fry Roofing Company may be subject to a fine of not more than \$10,000 for each day of such violation.


Complainant

Subscribed and sworn before me the day and year first above written.


S. Mark Johnson, Judge

I do hereby certify that the foregoing is a full true and correct copy of the COMPLAINT on file in the Bountiful City Court.

Arden F. Jenson, Clerk
By Janet Davis Clerk



Karen Martin has summoned service for P. 6