



## Memorandum

**Date:** March 25, 1998  
**To:** [Seminar Students]  
**From:** John-Mark Stensvaag  
**Re:** *Next Steps in Seminar: Draft Summary Judgment Motions & Supporting Affidavits*

The Calendar instruction for the submission due on April 1 specifies “Draft Summary Judgment Motions and Supporting Affidavits (¶ Only).” This means that you submit summary judgment motions only for the plaintiff’s side. The goal here is to learn how to prepare and submit summary judgment materials; there is no need to exhaust ourselves by preparing summary judgment materials for plaintiffs *and defendants*. Thus, your purpose in this exercise will be to demonstrate that you meet the FRCP 56(c) standard entitling you to a judgment for all or part of the relief that you originally sought in your complaint (injunction, civil penalties, and so forth). (Omit the attorneys’ fees part, because that will be addressed in a later motion.) Plaintiffs should articulate *precisely* what relief they claim they are entitled to, and *why* (e.g., civil penalty *amounts*). In this respect, I am also making available to you two items on EPA’s so-called “Penalty Policy”:

1. A spiral-bound booklet containing key generic documentary materials; the materials do not set forth the penalty policies for the distinct statutory programs, which may have their own wrinkles.
2. Computer files for running EPA’s BEN Computer Model, Version 4.4; I am making these computer files available to you on floppy disks. **Warning: The BEN Software is for IBM-compatible computers only; do not try to run it on a Mac computer.**

By “supporting affidavits,” I mean to impress upon you that you must adhere to FRCP 56(e), regarding the form of supporting documentation. You have the freedom as participants in the seminar to “make up” affidavits, but only insofar as you stick to the facts in the record. An example would be an affidavit showing *where* the discharge monitoring reports or other documents came from—in other words, to “authenticate” them. You may *specify* documentary attachments, without the necessity of duplicating them. Thus, for example, for the discharge monitoring reports, the attorney might specify that “Attachment B consists of the pages HALCO98B-1 through HALCO98B-180.” No Attachment B would actually be submitted.

The April 1 submission will be a draft only, and we will have our usual Team Conferences on April 3 in my office.

I highly recommend that you read the following, in preparation for the summary judgment submissions:

1. Federal Rule of Civil Procedure 56

2. Haydock, et al., *Fundamentals of Pretrial Litigation* 517-40 (3d ed. 1994) (on general reserve in the library)