

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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JUL 18 2003

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS

Complainant,

v.

DRAW DRAPE CLEANERS, INC., an
Illinois corporation,

Respondent.

Case No. PCB 03-51
(Enforcement – Air)

NOTICE OF FILING

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On July 18, 2003, we filed with the Clerk of the Illinois Pollution Control Board, James R. Thompson Center, 100 W. Randolph, Suite 11-500, Chicago, Illinois 60601, **DRAW DRAPE CLEANERS' RESPONSE TO MOTION FOR PARTIAL SUMMARY JUDGMENT**, a copy of which is served on you.

DRAW DRAPE CLEANERS, INC., an Illinois
corporation

By: Michele Rocawich
One of their attorneys

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CERTIFICATE OF SERVICE

I, Michele Rocawich, certify that on July 18, 2003, Respondents' Response to Motion for Partial Summary Judgment were served on: Bradley P. Halloran by hand delivery; and Joel J. Sternstein and Maureen Wozniak by facsimile and first class mail.



Michele Rocawich

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**DRAW DRAPE CLEANERS' RESPONSE
TO MOTION FOR PARTIAL SUMMARY JUDGMENT**

Respondent Draw Drape Cleaners, Inc., by its attorneys, Weissberg and Associates, Ltd., responds to Complainant's Motion for Partial Summary Judgment and in support states:

MITIGATING CIRCUMSTANCES DICTATE FINDING FOR DRAW DRAPES

Respondent Draw Drape Cleaners ("Draw Drapes") operates a dry cleaning facility that is unique in that its process commercially flame proofs drapes in a cost effective manner that triples the life of the draperies. Its process provides a unique and useful service that the State of Illinois has approved for use by schools and related entities, and lists Draw Drapes operation as a source on the State's website. At issue in this Complaint is emissions from Dryer #2 which Draw Drapes installed in 1996 to use in place of an identical Dryer (i.e., Dryer #1) which was damaged in a fire at Draw Drapes' facility in 1994. The 1994 fire damaged Draw Drapes' physical plant and Dryer #1 which was installed in the 1960s. Pursuant to the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2002), Dryer #1 was "grandfathered in" and did not require a permit.

After the fire in 1994, Draw Drapes obtained a permit to rebuild its plant. Dryer #1 which was damaged in the fire was a 110 lb. dryer and Draw Drapes needed a dryer of that size for its operations. When the plant was rebuilt, there was no recovery dryer available large enough for the size of Draw Drapes operations and Draw Drapes needed a dryer the size of Dryer #1 to continue its operations. Therefore, Draw Drapes installed Dryer #2 on an interim

basis until it could purchase a recovery dryer in the proper size. Draw Drapes believed that because Dryer #2 was identical to Dryer #1 which destroyed in the fire, it could operate Dryer #2 without violating the Act.

Draw Drapes immediately ordered a new recovery dryer when a recovery dryer in the proper size (i.e., a 100 lb. recovery dryer) became available in May 2002. The manufacturer accepted Draw Drapes' order for the new recovery dryer in May 2002 and delivered the new dryer (Dryer #3) in late September 2002. Draw Drapes obtained Permit #02030079, and installed and began operating Dryer #3 in May 2003. Since Dryer #2 replaced an identical dryer damaged in the 1994 fire, Draw Drapes has used Dryer #2 mainly to ready drapes for pressing by "fluffing." The process of "fluffing" does not emit volatile organic materials (VOM) into the environment. During the period Draw Drapes operated Dryer #2, it has emitted minimal VOMs into the environment. Draw Drapes operation of Dryer #2 did not violate the FESOP.

Significantly, Draw Drapes has had a Federally Enforceable State Operating Permit (FESOP) since a permit was required, and Draw Drapes has always operated its plant below the emissions allowed under its FESOP Permit #95100005. In fact, Draw Drapes would have to emit an additional 1,000 gallons per year to reach the emissions allowed under its FESOP.

Draw Drapes was severely adversely impacted by the 1994 fire, rebuilt its plant and resumed operations that provide a unique service to the public including schools in Illinois. When Draw Drapes resumed its operations, Draw Drapes did not violate the spirit of the Act. In support of its motion for summary judgment, Complainant relies on the answers Draw Drapes provided to Complainant's interrogatories. Draw Drapes has consistently attempted to work with the Illinois Environmental Protection Agency to comply with pollution control regulations and truthfully responded to the allegations of this complaint. Draw Drapes has not violated the spirit of the Act and should not be punished for its compliance.

ARGUMENT

Complainant's motion asks the Illinois Pollution Control Board ("Board") to find that summary judgment is appropriate on the following counts of the complaint: 1) Count IV ---

alleging that Draw Drapes constructed an emissions source without a permit in violation of the Act; 2) Count V --- alleging that Draw Drapes operated an emissions source without a permit in violation of the Act; 3) Count VII --- alleging that Draw Drapes did not install a solvent recovery dryer with a cartridge filter in violation of the Act; and 4) Count VIII --- alleging Draw Drapes did not perform the initial emissions test as required by the Act.

As to Count IV which alleges that Draw Drapes constructed an emission source without a permit, Draw Drapes installed Dryer #1, a 110 lb. dryer, in the 1960s and operated it in compliance with Act until it was damaged along Draw Drapes' physical plant in 1994. Forced to rebuild its plant in order to continue its operations, Draw Drapes obtained a permit to rebuild. To resume operations, Draw Drapes needed a dryer with at least a 100 lb capacity to replace destroyed Dryer #1. In 1996 when the plant was rebuilt and ready to operate, a recovery dryer that size was not available. Therefore, Draw Drapes purchased and installed Dryer #2 which was identical to Dryer #1. Because the dryers were identical and Dryer #1 was destroyed in a fire and Draw Drapes had obtained a permit to rebuild, Draw Drapes believed it was operating Dryer #2 in compliance with the Act and that its operating permit covered Dryer #2. As soon as a recovery dryer became available in the proper size, Draw Drapes ordered and installed the recovery dryer.

As to Count V which alleges that Draw Drapes operated an emissions source without a permit, from the time Draw Drapes installed and began operating Dryer #2, it operated it mainly to "fluff" draperies. The process of "fluffing" does not emit VOMs into the environment. During the period Draw Drapes operated Dryer #2, it has emitted minimal VOMs into the environment. Richard Zell of Draw Drapes provided a verification with Draw Drapes answers to complaint attesting to these facts. (copy is attached as Exhibit 1). Mr. Zell avers that: 1) Draw Drapes has had a Federally Enforceable State Operating Permit (FESOP) since a permit was required; 2) Draw Drapes has always operated its plant below the emissions allowed under its FESOP Permit #95100005; and 3) Draw Drapes would have to emit an additional 1,000 gallons per year to reach the emissions allowed under its FESOP.

Mr. Zell's verification constitutes "evidentiary facts" and Complainant has proved no evidentiary facts such as an affidavit to controvert the evidentiary facts submitted by Draw

Drapes. Unsworn and unverified statements cannot be considered on a motion for summary judgment. *Rotzoll v. Overhead Door Corp.*, 289 Ill.App.3d 410, 161-62, 681 N.E.2d 156 (4th Dist. 1997); *West v. Deere & Co.*, 201 Ill.App.3d 891, 900, 559 N.E.2d 511 (2nd Dist. 1990). Unsubstantiated hearsay statements cannot be considered in ruling on a motion for summary judgment. *Laja v. AT & T*, 283 Ill.App.3d 126, 136, 669 N.E.2d 645 (1st Dist. 1996)(citing *Seefelt v. Milliken Natinal Bank ofDecatur*, 154 Ill. Spp.3d 715, 506 N.E.2d 1052 (1987)). As such, the Board cannot consider the unsworn and unverified statements of Complainant's Counsel contained in its motion for summary judgment.

As to Count VII which alleges that Draw Drapes did not install a recovery dryer with a cartridge filter in violation of the Act, a recovery dryer with a cartridge filter of the proper size to replace the Dryer destroyed in the fire at Draw Drapes' plant was not available in 1996 when Draw Drapes had rebuilt the plant and was ready to operate. When a recovery dryer in the proper size (i.e., a 100 lb. recovery dryer) became available in May 2002, Draw Drapes immediately ordered a new recovery dryer. The manufacturer accepted Draw Drapes' order for the new recovery dryer in May 2002 and delivered the new dryer (Dryer #3) in late September 2002. Draw Drapes obtained Permit #02030079, and installed and began operating Dryer #3 in May 2003.

As to Count VIII which alleges Draw Drapes did not perform an initial emissions test, Draw Drapes did not perform an emissions test when Draw Drapes began operating Dryer #2 as a replacement for Dryer #1 which was destroyed in the 1994 fire because no commercial emissions test was available at that time. Moreover, Draw Drapes has had a Federally Enforceable State Operating Permit (FESOP) since a permit was required, and Draw Drapes has always operated its plant below the emissions allowed under its FESOP Permit #95100005. In fact, Draw Drapes would have to emit an additional 1,000 gallons per year to reach the emissions allowed under its FESOP. As stated above, Draw Drapes verified this fact and Complainant did not controvert this properly supported material fact

Complainant's unsupported allegations are simply not sufficient to support its motion for summary judgment, and Draw Drapes has consistently acted in a manner that demonstrates its intent to conform with the spirit of the Act.

CONCLUSION

For the foregoing reasons, the Illinois Pollution Control Board should deny Complainant's motion for summary judgment.

DRAW DRAPE CLEANERS, INC., an
Illinois corporation

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