

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD JUL 02 2004

PEOPLE OF THE STATE OF ILLINOIS, )  
ex rel. LISA MADIGAN, Attorney )  
General of the State of Illinois )

STATE OF ILLINOIS  
Pollution Control Board

Complainant, )

v. )

No. PCB 03-51

DRAW DRAPE CLEANERS, INC., an )  
Illinois corporation, AMERICAN )  
DRAPERY CLEANERS & FLAMEPROOFERS, )  
INC., an Illinois corporation, and )  
RICHARD ZELL, an Illinois resident, )

Respondents. )

NOTICE OF FILING

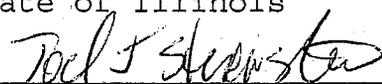
TO: See Attached Service List

PLEASE TAKE NOTICE that on July 2, 2004, the People of the State of Illinois filed with the Illinois Pollution Control Board COMPLAINANT'S SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT, true and correct copies of which are attached and hereby served upon you.

Respectfully submitted,

LISA MADIGAN  
Attorney General  
State of Illinois

BY:



JOEL J. STERNSTEIN  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St., 20th Floor  
Chicago, Illinois 60601  
(312) 814-6986

SERVICE LIST

Mr. Bradley Halloran, Esq.  
Illinois Pollution Control Board  
100 W. Randolph Street, Suite 11-500  
Chicago, Illinois 60601

Ms. Maureen Wozniak, Esq.  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62702

Ms. Michele Rocawich, Esq.  
Weissberg and Associates, Ltd.  
401 S. LaSalle Street, Suite 403  
Chicago, Illinois 60605

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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RICHARD ZELL, an Illinois resident, )

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COMPLAINANT'S SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, ex rel. LISA MADIGAN, Attorney General of the State of Illinois, and pursuant to Section 101.516 of the Illinois Pollution Control Board Procedural Regulations, 35 Ill. Adm. Code 101.516, hereby moves for the entry of an order granting partial summary judgment in favor of the Complainant and against Respondents RICHARD ZELL, an Illinois resident, and AMERICAN DRAPERY CLEANERS & FLAMEPROOFERS, an Illinois corporation.

INTRODUCTION

An eight-count complaint was filed in this matter on October 15, 2002 against Respondent Draw Drape Cleaners, Inc. ("Draw Drape"). An Amended Complaint, substantially similar to the original complaint, was filed against Draw Drape and Respondents Richard Zell ("Zell") and American Drapery Cleaners &

Flameproofers, Inc. ("ADC&FI") on December 30, 2003. A copy of the Amended Complaint is attached hereto and incorporated herein as **Exhibit 1**. The Amended Complaint involves a petroleum solvent dry cleaning facility operated by Respondents located at 2235-2239 West Roscoe Street, Chicago, Cook County, Illinois.

On June 27, 2003, Complainant filed its first Motion for Partial Summary Judgment against Respondent Draw Drape ("First Motion"). See **Exhibit 2**. On August 21, 2003 the Board granted Complainant's First Motion. See **Exhibit 3**. The Board found in Complainant's favor on each of the four counts for which Complainant sought summary judgment: Count IV, construction of an emissions source without a permit; Count V, operation of an emissions source without a permit; Count VII, installation of a non-solvent recovery dryer and lack of a cartridge filter; and Count VIII, failure to perform an initial flow rate test on Dryer #2.

Complainant served Respondent Draw Drape with two sets of written discovery which Draw Drape answered. Portions of the answers to Complainant's discovery requests are attached herein.

Today, Complainant is filing its Second Motion for Partial Summary Judgment ("Second Motion") against Respondents Zell and ADC&FI with respect to the same counts for which it was awarded summary judgment in the First Motion.

### SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when the pleadings, depositions, admissions on file, and affidavits disclose there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Dowd & Dowd, Ltd. v. Gleason, 181 Ill.2d 460, 483, 693 N.E.2d 358, 370 (1998). Use of summary judgment procedure is to be encouraged as an aid in expeditious disposition of lawsuits; however, it is drastic means of disposing of litigation and should be allowed only when the right of the moving party is clear and free of doubt. Gilbert v. Sycamore Municipal Hospital, 156 Ill.2d 511, 518, 622 N.E.2d 788, 792 (1993). Although summary judgment is drastic, the instant case is tailor made for this type of disposition and resolution. Furthermore, using summary judgment as a means of finding Respondents Zell and ADC&FI liable for violations of the laws and regulations as alleged in Counts IV, V, VII, and VIII will limit the future proceedings by the Complainant against those Respondents and will dispose of a portion of the lawsuit. Complainant's right to summary judgment on Counts IV, V, VII, and VIII with respect to Respondents Zell and ADC&FI is clear and free of doubt. This is an appropriate use of summary judgment.

### ADMITTED FACTS AND ARGUMENT - DRAW DRAPE

Complainant incorporates the "Admitted Facts and Background Law" section and the arguments sections of its First Motion into

this Second Motion as though fully set forth herein. See Exhibit 2, pp. 4-11.

#### LIABILITY OF ADC&FI AND ZELL

Complainant alleges that both Respondents Zell and ADC&FI are equally as liable as Draw Drape for the violations of the Environmental Protection Act ("Act") and Board regulations by virtue of their relationship to Draw Drape. Thus, any finding of summary judgment against Draw Drape should also apply to Zell and ADC&FI.

#### Liability of Zell

In Illinois environmental law, corporate officers can be personally liable for their company's environmental violations. The standard for corporate officer liability in environmental enforcement actions is set forth in People v. C.J.R. Processing, Inc., et al., 269 Ill. App. 3d 1013, 647 N.E.2d 1035 (3d Dist. 1995). As in this case, the People sued both the company and a corporate officer for the violations of the Act and regulations. Id. at 1014, 647 N.E.2d at 1036. The C.J.R. Court held that a corporate officer constitutes a "person" under Section 3.26 (now 3.315) of the Act. Id. A corporate officer can be held personally liable for his company's environmental violations if he was personally involved in or actively participated in a violation of the Act, or if he had the ability or authority to control the acts or omissions that gave rise to the violation.

Id. at 1018, 647 N.E.2d at 1038.<sup>1</sup> The C.J.R. Court went on to say that the General Assembly intended for the Act to be liberally construed. Id. at 1037. Any other ". . . interpretation of section 3.26 (now 3.315) would not serve the Act's express purpose of imposing responsibility upon those who cause harm to the environment." Id. Imposition of liability on only the corporation and not upon those responsible individuals would prevent enforcement of the Act from achieving its objective.

Respondents identified Zell as the Vice President of Draw Drape. Respondents also identified Zell as one of only two people having knowledge of the operations at the dry cleaning facility and having knowledge of the VOM emissions at the facility. See Exhibit 4, Answer to Interrogatory 2. Respondents admit that Zell operates and manages both Draw Drape and ADC&FI. Zell is/was the only person responsible for day-to-day operations

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<sup>1</sup> The C.J.R. Court relied upon the Eighth Circuit's decision in United States v. Northeastern Phar. And Chem. Co., Inc., et al., 810 F.2d 726 (8th Cir. 1986). In Northeastern Pharmaceutical, the federal government sought to have a corporation's president and vice-president held personally liable for their company's improper hazardous waste disposal. In holding these corporate officers personally liable, the Eighth Circuit noted, that while the president of the corporation was not involved in the actual day-to-day decisions to transport and dispose of the hazardous waste, he "was the individual in charge of and directly responsible for all of [his company's] operations, including those at the [subject] plant, and he had the ultimate authority to control the disposal of [his company's] hazardous substances." 810 F.2d at 745 (underline added).

of th dry cleaning business. See Exhibit 5, Answer to Interrogatories 1 and 3. Furthermore, Zell "is the only person who had dealings with or conferred with or corresponded or met with government regulators . . . in all matters related to the Complaint . . ." See Exhibit 5, Answer to Interrogatory 2.

Given that Zell had complete and total control over all aspects of the day-to-operations at Draw Drape, Zell also had complete and total control over acts and/or omissions giving rise to the violations as alleged in the Amended Complaint. Given his complete control of Draw Drape and his knowledge of the VOM issue, Zell was also personally involved in and actively participated in acts or omissions which resulted in violations of the Act, violations of the Board's regulations, and violations of the C.F.R. Under the holding in C.J.R., Zell is just as liable for the violations as alleged in the Amended Complaint as is Draw Drape.

There are no disputed facts regarding Zell's control over Draw Drape, and the legal authority for holding Zell liable as spelled out in C.J.R. is clear. Given that the Board has ruled in Complainant's favor on its First Motion with respect to Draw Drape, it should also rule in favor of Complainant on its Second Motion with respect to Zell.

#### Liability of ADC&FI

Complainant claims that ADC&FI is liable for the same

violations in the Amended Complaint against Draw Drape given that, but for the name, the two corporations are essentially the same entity.

In Draw Drape's First Response to Complainant's First Set of Interrogatories, Complainant asked Draw Drape to describe its relationship to ADC&FI. Although Draw Drape applied for and received the Federally Enforceable State Operating Permit (FESOP), ADC&FI is engaged in the same dry cleaning business as Draw Drape. Draw Drape and ADC&FI are owned by the same parties and use the same facilities. **See Exhibit 4, Answer to Interrogatory 8.** But for the identity of the customers served, both companies constructed and operated the same non-permitted emissions source, used the same non-solvent recovery dryer without a cartridge filter, and used Dryer #2 without performing an initial flow rate test. Furthermore, Draw Drape and ADC&FI are wholly owned (50% each) by the same two parties - Zell and Steven Press. **See Exhibit 4, Answer to Interrogatories 8 and 10; Exhibit 5, Answer to Interrogatory 4.**

The facts are clear and undisputed regarding the culpability of ADC&FI for the alleged violations. The law is clear as well. Pursuant to C.J.R. and given the General Assembly's intent that the Act be liberally construed, the corporate veil between Draw Drape and ADC&FI should be pierced just as the corporate veil between Draw Drape and Zell should be pierced. The Board has

ruled in Complainant's favor on its First Motion with respect to Draw Drape's liability, and it should also rule in favor of Complainant on its Second Motion with respect to ADC&FI's liability.

CONCLUSION

WHEREFORE, for the foregoing reasons, Complainant respectfully requests the Board to:

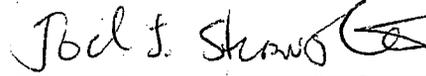
1. Enter an order granting summary judgment for Complainant and against Respondents Zell and ADC&FI for Counts IV, V, VII, and VIII in the Amended Complaint;
2. Order that Respondents Zell and ADC&FI are liable for penalties for violations of the Act, the Board Air Pollution Regulations, and the Code of Federal Regulations;
3. Assess the Attorney General's fees and costs in this case against Respondents Zell and ADC&FI; and
4. Order any other relief it deems just and appropriate.

Respectfully submitted,

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

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

By:



JOEL STERNSTEIN  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St. 20th Fl.  
Chicago, Illinois 60601  
(312) 814-6986

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

DEC 30 2003

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

STATE OF ILLINOIS  
Pollution Control Board

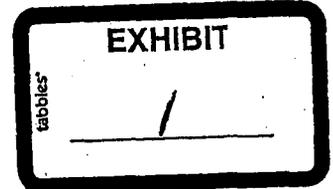
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RICHARD ZELL, an Illinois resident, )

Respondents. )



NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on December 30, 2003, the People of the State of Illinois filed with the Illinois Pollution Control Board an AMENDED COMPLAINT FOR CIVIL PENALTIES, true and correct copies of which are attached and hereby served upon you.

Respectfully submitted,

LISA MADIGAN  
Attorney General  
State of Illinois

BY: *Joel J. Sternstein*

JOEL J. STERNSTEIN  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St., 20th Floor  
Chicago, Illinois 60601  
(312) 814-6986

Date: December 30, 2003

SERVICE LIST

Mr. Bradley Halloran, Esq.  
Illinois Pollution Control Board  
100 W. Randolph Street, Suite 11-500  
Chicago, Illinois 60601

Ms. Maureen Wozniak, Esq.  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62702

Ms. Michele Rocawich, Esq.  
Weissberg and Associates, Ltd.  
401 S. LaSalle Street, Suite 403  
Chicago, Illinois 60605

Mr. Richard Zell  
President, Draw Drape Cleaners  
Vice President and Secretary,  
American Drapery Cleaners and Flameproofers Inc.  
2235 West Roscoe  
Chicago, Illinois 60618

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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General of the State of Illinois )

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AMENDED COMPLAINT FOR CIVIL PENALTIES

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA  
MADIGAN, Attorney General of the State of Illinois, complains of  
Respondents, DRAW DRAPE CLEANERS, INC., AMERICAN DRAPERY CLEANERS  
& FLAMEPROOFERS, INC., and RICHARD ZELL as follows:

COUNT I

AIR POLLUTION

1. This Complaint is brought on behalf of the People  
("Complainant") by the Attorney General on her own motion and  
upon the request of the Illinois Environmental Protection Agency  
("Illinois EPA") pursuant to the terms and provisions of Section  
31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS  
5/31(2002).

2. Specifically, this Complaint is brought against  
Respondent DRAW DRAPE CLEANERS, INC. ("DDCI") pursuant to Section

31 of the Act, 415 ILCS 5/31 (2002). This Complaint is brought against Respondents AMERICAN DRAPERY CLEANERS & FLAMEPROOFERS, INC. ("ADC&FI") and RICHARD ZELL by the Attorney General on her own motion.

3. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2002), and charged, *inter alia*, with the duty of enforcing the Act.

4. At all times relevant to this Complaint, Respondent DDCI was and is an Illinois corporation duly organized and existing under the laws of the State of Illinois and is in good standing.

5. At all times relevant to this Complaint, Respondent ADC&FI was and is an Illinois corporation duly organized and existing under the laws of the State of Illinois and is in good standing.

6. At all times relevant to this Complaint, Respondent RICHARD ZELL was and is a resident of the State of Illinois.

7. Respondents operate a facility located at 2235-2239 West Roscoe Street, Chicago, Cook County, Illinois, 60618 ("facility").

8. Respondents operate a petroleum solvent dry cleaning operation at the facility to clean drapes.

9. Respondent RICHARD ZELL is the operator and manager of

both DDCI and ACDAFI. RICHARD ZELL is responsible for the day-to-day operations of both DDCI and ACDAFI. RICHARD ZELL is the registered agent for DDCI and the corporate secretary for ACDAFI.

10. Respondents installed Dryer #1 at its facility in 1980 and continue to operate Dryer #1. Dryer #1 is a petroleum solvent dryer, but it is not a solvent recovery dryer. Dryer #1 lacks a cartridge filter.

11. Respondents installed Dryer #2 at the facility in 1996 and continue to operate Dryer #2. Dryer #2 is a petroleum solvent dryer, but it is not a solvent recovery dryer. Dryer #2 lacks a cartridge filter.

12. Both Dryer #1 and Dryer #2 emit volatile organic material ("VOM") to the environment.

13. Section 3.315 of the Act, 415 ILCS 5/3.315 (2002), provides the following definition:

"Person" is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

14. Each Respondent is a "person" as the term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2002).

15. Section 3.165 of the Act, 415 ILCS 5/3.165 (2002), provides the following definition:

"Contaminant" is any solid, liquid, or

gaseous matter, any odor, or any form of energy, from whatever source.

16. VOM is a contaminant, as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2002).

17. Section 3.115 of the Act, 415 ILCS 5/3.115 (2002), provides the following definition:

"Air pollution" is the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

18. Section 9(a) of the Act, 415 ILCS 5/9(a) (2002), provides as follows:

No person shall:

(a) Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, so as to violate regulations or standards adopted by the Board under this Act;

19. Section 201.141 of the Illinois Pollution Control Board ("Board") Air Pollution Regulations, 35 Ill. Adm. Code 201.141, provides as follows:

**Section 201.141 Prohibition of Air Pollution**

No person shall cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as, either alone or in combination with contaminants from other sources, to cause or

tend to cause air pollution in Illinois, or so as to violate the provisions of this Chapter, or so as to prevent the attainment or maintenance of any applicable ambient air quality standard.

20. Respondents have emitted VOM into the atmosphere from Dryer #1 and Dryer #2 causing air pollution in violation of the Federally Enforceable State Operating Permit ("FESOP"), in violation of the Act, and in violation of the Board's regulations.

21. Respondents, by their conduct alleged herein, violated Section 9(a) of the Act, 415 ILCS 5/9(a)(2002), and Section 201.141 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.141.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter a judgment in favor of Complainant and against Respondents DRAW DRAPE CLEANERS, INC., AMERICAN DRAPERY CLEANERS & FLAMEPROOFERS, INC., and RICHARD ZELL on Count I:

1. Authorizing a hearing in this matter at which time Respondents will be required to answer the allegations herein;
2. Finding that Respondents have violated Section 9(a) of the Act, 415 ILCS 5/9(a)(2002), and Section 201.141 of the Board Air Pollution Regulation, 35 Ill. Adm. Code 201.141;
3. Ordering Respondents to cease and desist from further violations of Section 9(a) of the Act, 415 ILCS 5/9(a)(2002), and

Section 201.141 of the Board Air Pollution Regulation, 35 Ill. Adm. Code 201.141;

4. Assessing against Respondents a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and pertinent Board Air Pollution Regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Taxing all costs in this action pursuant to Section 42(f) of the Act, including attorney, expert witness and consultant fees, against Respondents; and

6. Granting such other relief as the Board deems appropriate and just.

#### COUNT II

#### VIOLATION OF STANDARDS FOR PETROLEUM SOLVENT DRY CLEANERS

1 - 18. Complainant realleges and incorporates by reference herein paragraphs 1 through 18 of Count I as paragraphs 1 through 18 of this Count II.

19. Section 218.607 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.607, provides as follows:

#### Standards for Petroleum Solvent Dry Cleaners

a) The owner or operator of a petroleum solvent dry cleaning dryer shall either:

- 1) Limit emissions of VOM to the atmosphere to an average of 3.5 kilograms of VOM per 100 kilograms dry weight of articles dry cleaned, or

2) Install and operate a solvent recovery dryer in a manner such that the dryer remains closed and the recovery phase continues until a final solvent flow rate of 50 milliliters per minute is attained.

b) The owner or operator of a petroleum solvent filtration system shall either:

1) Reduce the VOM content in all filtration wastes to 1.0 kilogram or less per 100 kilograms dry weight of articles dry cleaned, before disposal, and exposure to the atmosphere, or

2) Install and operate a cartridge filtration system, and drain the filter cartridges in their sealed housings for 8 hours or more before their removal.

20. For both Dryer #1 and Dryer #2, Respondents have failed to limit VOM emissions to the atmosphere to an average of 3.5 kilograms of VOM per 100 kilograms dry weight articles cleaned.

21. Neither Dryer #1 nor Dryer #2 are solvent recovery dryers.

22. For both Dryer #1 and Dryer #2, Respondents have failed to reduce VOM content in all filtration wastes to 1.0 kilogram or less per 100 kilograms of articles dry cleaned, before disposal, and exposure to the atmosphere.

23. Neither Dryer #1 nor Dryer #2 have a cartridge filtration system.

24. Respondents, by their conduct as alleged herein, violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2002), and

Section 218.607 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.607.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter a judgment in favor of Complainant and against Respondents DRAW DRAPE CLEANERS, INC., AMERICAN DRAPERY CLEANERS & FLAMEPROOFERS, INC., and RICHARD ZELL on Count II:

1. Authorizing a hearing in this matter at which time Respondents will be required to answer the allegations herein;
2. Finding that Respondents have violated Section 9(a) of the Act, 415 ILCS 5/9(a)(2002), and Section 218.607 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.607;
3. Ordering Respondents to cease and desist from further violations of Section 9(a) of the Act, 415 ILCS 5/9(a)(2002), and Section 218.607 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.607;
4. Assessing against Respondents a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and pertinent Board Air Pollution Regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Taxing all costs in this action pursuant to Section 42(f) of the Act, including attorney, expert witness and consultant fees, against Respondents; and

6. Granting such other relief as the Board deems appropriate and just.

COUNT III

FAILURE TO CONDUCT ADEQUATE TESTING

1 - 18. Complainant realleges and incorporates by reference herein paragraphs 1 through 18 of Count I as paragraphs 1 through 18 of this Count III.

19. Section 218.610 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.610, provides as follows:

Testing and Monitoring

a) Compliance with Sections 218.607(b)(2), 218.608 and 218.609 of this Part shall be determined by visual inspection; and

b) Compliance with Sections 218.607(a)(2) and (b)(1) of this Part shall be determined by methods described in EPA-450/3-82-009 (1982) incorporated by reference in Section 218.112 of this Part.

20. Section 218.607 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.607, sets standards for petroleum solvent dry cleaning operations.

21. Respondents have failed to visually inspect both Dryer #1 and Dryer #2 in order to demonstrate compliance with the requirements of Section 218.607(b)(2) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.607(b)(2).

22. Respondents have failed to follow the methods described in EPA-450/3-82-009 (1982) in order to demonstrate compliance

with Sections 218.607(a)(2) and 218.607(b)(1) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.607(a)(2) and (b)(1), for both Dryer #1 and Dryer #2.

23. Respondents, by their conduct as alleged herein, violated Section 9(a) of the Act, 415 ILCS 5/9(a)(2002), and Section 218.610 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.610.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter a judgment in favor of Complainant and against Respondents DRAW DRAPE CLEANERS, INC., AMERICAN DRAPERY CLEANERS & FLAMEPROOFERS, INC., and RICHARD ZELL on Count III:

1. Authorizing a hearing in this matter at which time Respondents will be required to answer the allegations herein;

2. Finding that Respondents have violated Section 9(a) of the Act, 415 ILCS 5/9(a)(2002), and Section 218.610 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.610;

3. Ordering Respondents to cease and desist from further violations of Section 9(a) of the Act, 415 ILCS 5/9(a)(2002), and Section 218.610 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.610;

4. Assessing against Respondents a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and pertinent Board Air Pollution Regulations, and an additional

civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Taxing all costs in this action pursuant to Section 42(f) of the Act, including attorney, expert witness and consultant fees, against Respondents; and

6. Granting such other relief as the Board deems appropriate and just.

#### COUNT IV

##### CONSTRUCTION OF AN EMISSIONS SOURCE WITHOUT A PERMIT

1-16. Complainant realleges and incorporates by reference herein paragraphs 1 through 16 of Count I as paragraphs 1 through 16 of this Count IV.

17. Section 9(b) of the Act, 415 ILCS 5/9(b) (2002), provides as follows:

No person shall:

\* \* \*

(b) Construct, install, or operate any equipment, facility, vehicle, vessel, or aircraft capable of causing or contributing to air pollution or designed to prevent air pollution, of any type designated by Board regulations, without a permit granted by the Agency, or in violation of any conditions imposed by such permit.

18. Section 201.102 of the Illinois Pollution Control Board ("Board") Air Pollution Regulations, 35 Ill. Adm. Code 201.102, provides, in pertinent part, the following definitions:

"Emission Source": any equipment or facility

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of a type capable of emitting specified air contaminants to the atmosphere.

"New Emission Source": any emission source, the construction or modification of which is commenced on or after April 14, 1972.

"Specified Air Contaminant": any air contaminant as to which this Subtitle contains emission standards or other specific limitations and any contaminant regulated Illinois pursuant to Section 9.1 of the Act.

19. VOM is a specified air contaminant as defined by Section 201.102 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.102.

20. Dryer #2 is a "new emission source" as that term is defined by Section 201.102 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.102 because it is capable of emitting VOM.

21. Section 201.142 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.142, provides as follows:

**Section 201.142 Construction Permit Required**

No person shall cause or allow the construction of any new emission source or any new air pollution control equipment, or cause or allow the modification of any existing emission source or air pollution control equipment, without first obtaining a construction permit from the Agency, except as provided in Section 201.146.

22. Respondents installed Dryer #2 at the facility without first obtaining a permit from the Illinois EPA.

23. Respondents, by their conduct as alleged herein,

violated Section 9(b) of the Act, 415 ILCS 5/9(b)(2002), and Section 201.142 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.142.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter a judgment in favor of Complainant and against Respondents DRAW DRAPE CLEANERS, INC., AMERICAN DRAPERY CLEANERS & FLAMEPROOFERS, INC., and RICHARD ZELL on Count IV:

1. Authorizing a hearing in this matter at which time Respondents will be required to answer the allegations herein;
2. Finding that Respondents have violated Section 9(b) of the Act, 415 ILCS 5/9(b)(2002), and Section 201.142 of the Board Air Pollution Regulation, 35 Ill. Adm. Code 201.142;
3. Ordering Respondents to cease and desist from further violations of Section 9(b) of the Act, 415 ILCS 5/9(b)(2002), and Section 201.142 of the Board Air Pollution Regulation, 35 Ill. Adm. Code 201.142;
4. Assessing against Respondents a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and pertinent Board Air Pollution Regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Taxing all costs in this action pursuant to Section 42(f) of the Act, including attorney, expert witness and

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consultant fees, against Respondents; and

6. Granting such other relief as the Board deems appropriate and just.

COUNT V

OPERATION OF AN EMISSIONS SOURCE WITHOUT A PERMIT

1-16. Complainant realleges and incorporates by reference herein paragraphs 1 through 16 of Count IV as paragraphs 1 through 16 of this Count V.

17. Section 201.143 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.143, provides, in pertinent part, as follows:

Operating Permit for New Sources

No person shall cause or allow the operation of any new emission source or new air pollution control equipment of a type for which a construction permit is required by Section 201.142 without first obtaining an operating permit from the Agency, except for such testing operations as may be authorized by the construction permit.

18. Since 1996, Respondents have operated and continue to operate Dryer #2 without first obtaining a permit from the Illinois EPA.

19. Respondents, by their conduct as alleged herein, violated Section 201.143 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.143, and Section 9(b) of the Act, 415 ILCS 5/9(b) (2002).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS,

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respectfully requests that the Board enter a judgment in favor of Complainant and against Respondents DRAW DRAPE CLEANERS, INC., AMERICAN DRAPERY CLEANERS & FLAMEPROOFERS, INC., and RICHARD ZELL on Count V:

1. Authorizing a hearing in this matter at which time Respondents will be required to answer the allegations herein;

2. Finding that Respondents have violated Section 9(b) of the Act, 415 ILCS 5/9(b)(2002), and Section 201.143 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.143;

3. Ordering Respondents to cease and desist from further violations of Section 9(b) of the Act, 415 ILCS 5/9(b)(2002), and Section 201.143 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.143;

4. Assessing against Respondents a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and pertinent Board Air Pollution Regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Taxing all costs in this action pursuant to Section 42(f) of the Act, including attorney, expert witness and consultant fees, against Respondents; and

6. Granting such other relief as the Board deems appropriate and just.

COUNT VI

VIOLATION OF FESOP CONDITION 5

1-15. Complainant realleges and incorporates by reference herein paragraphs 1 through 4, 7 through 8, and 10 through 16 of Count I and paragraphs 17 and 18 of Count IV as paragraphs 1 through 15 of this Count VI.

16. Respondent DDCI was granted a FESOP to operate its emissions sources. The FESOP was granted on January 13, 1998 and expires on January 13, 2003.

17. Respondent DDCI's FESOP, No. 95100005, provides, in pertinent part, the following condition:

\* \* \*

5. The Permittee shall comply with the standards, operating practices, inspections and repair of leaks, and the testing and monitoring requirements for petroleum solvent dry cleaners as specified in 35 Ill. Adm. Code 218.607 through 218.610.

18. By violating the Board Air Pollution Regulations at Sections 218.607 and 218.610, 35 Ill. Adm. Code 218.607 and 218.610, Respondent DDCI also violated Condition No. 5 of its FESOP No. 95100005. By violating Condition No. 5 of its FESOP No. 95100005, Respondent DDCI also violated 9(b) of the Act, 415 ILCS 5/9(b) (2002).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter a judgment in favor of

Complainant and against Respondent, DRAW DRAPE CLEANERS, INC., on  
Count VI:

1. Authorizing a hearing in this matter at which time Respondent DDCI will be required to answer the allegations herein;

2. Finding that Respondent DDCI has violated Condition 5 of FESOP No. 95100005, and Section 9(b) of the Act, 415 ILCS 5/9(b) (2002);

3. Ordering Respondent DDCI to cease and desist from further violations of Condition 5 of FESOP No. 95100005, Section 9(b) of the Act, 415 ILCS 5/9(b) (2002);

4. Assessing against Respondent DDCI a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and pertinent Board Air Pollution Regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Taxing all costs in this action pursuant to Section 42(f) of the Act, including attorney, expert witness and consultant fees, against Respondent; and

6. Granting such other relief as the Board deems appropriate and just.

COUNT VII

INSTALLATION OF A NON-SOLVENT RECOVERY DRYER  
AND LACK OF A CARTRIDGE FILTER ON DRYER #2

1-14. Complainant realleges and incorporates by reference

herein paragraphs 1 through 14 of Count I as paragraphs 1 through 14 of this Count VII.

15. Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2002), provides, in pertinent part, as follows:

No person shall:

(1) violate any provisions of Sections 111, 112, 165 or 173 of the Clean Air Act, as now or hereafter amended, or federal regulations adopted pursuant thereto; or

(2) construct, install, modify or operate any equipment, building, facility, source or installation which is subject to regulation under Sections 111, 112, 165 or 173 of the Clean Air Act, as now or hereafter amended, except in compliance with the requirements of such Sections and federal regulations adopted pursuant thereto, and no such action shall be undertaken without a permit granted by the Agency or in violation of any conditions imposed by such permit.

16. Sections 60.620 to 60.625 of Title 40 of the Code of Federal Regulations, 40 C.F.R. 60.620-60.625, were adopted pursuant to Section 111 of the Clean Air Act.

17. Sections 60.620 to 60.625 of Title 40 of the Code of Federal Regulations, 40 C.F.R. 60.620-60.625, set standards of performance for petroleum dry cleaners.

18. Section 60.622 of Title 40 of the Code of Federal Regulations, 40 C.F.R. 60.622 provides, in pertinent part, as follows:

Standards for volatile organic compounds

(a) Each affected petroleum solvent dry

cleaning dryer that is installed at a petroleum dry cleaning plant after December 14, 1982, shall be a solvent recovery dryer. The solvent recovery dryer(s) shall be properly installed, operated and maintained.

(b) Each affected petroleum solvent filter that is installed at a petroleum dry cleaning plant after December 14, 1982, shall be a cartridge filter. Cartridge filters shall be drained in their sealed housings for at least 8 hours prior to their removal.

19. Dryer #2 was installed after December 14, 1982. It is not a solvent recovery dryer, and it lacks a cartridge filter.

20. Respondents, by their conduct as alleged herein, violated Section 60.622 of Title 40 of the Code of Federal Regulations, 40 C.F.R. 60.622, and Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2002).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter a judgment in favor of Complainant and against Respondents DRAW DRAPE CLEANERS, INC., AMERICAN DRAPERY CLEANERS & FLAMEPROOFERS, INC., and RICHARD ZELL on Count VII:

1. Authorizing a hearing in this matter at which time Respondents will be required to answer the allegations herein;
2. Finding that Respondents have violated Section 60.622 of Title 40 of the Code of Federal Regulations, 40 C.F.R. 60.622, and Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2002);
3. Ordering Respondents to cease and desist from further violations of Section 60.622 of Title 40 of the Code of Federal

Regulations, 40 C.F.R. 60.622, and Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2002);

4. Assessing against Respondents a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and pertinent Board Air Pollution Regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Taxing all costs in this action pursuant to Section 42(f) of the Act, including attorney, expert witness and consultant fees, against Respondents; and

6. Granting such other relief as the Board deems appropriate and just.

#### COUNT VIII

##### FAILURE TO PERFORM AN INITIAL FLOW RATE TEST ON DRYER #2

1 - 19. Complainant realleges and incorporates by reference herein paragraphs 1 through 19 of Count VII as paragraphs 1 through 19 of this Count VIII.

20. Section 60.624 of Title 40 of the Code of Federal Regulations, 40 C.F.R. 60.624, provides, in pertinent part, as follows:

##### Test methods and procedures

Each owner or operator of an affected facility subject to the provisions of §60.622(a) shall perform an initial test to verify that the flow rate of recovered solvent from the solvent recovery dryer at the termination of the recovery cycle is no

greater than 0.05 liters per minute. This test shall be conducted for a duration of no less than 2 weeks during which no less than 50 percent of the dryer loads shall be monitored for their final recovered solvent flow rate.

21. Respondents did not initially test Dryer #2 to verify the flow rate of recovered solvent after Dryer #2 was installed in 1996.

22. Respondents, by their conduct as alleged herein, violated Section 60.624 of Title 40 of the Code of Federal Regulations, 40 C.F.R. 60.624, and Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2002).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter a judgment in favor of Complainant and against Respondents DRAW DRAPE CLEANERS, INC., AMERICAN DRAPERY CLEANERS & FLAMEPROOFERS, INC., and RICHARD ZELL on Count VIII:

1. Authorizing a hearing in this matter at which time Respondents will be required to answer the allegations herein;

2. Finding that Respondents have violated Section 60.624 of Title 40 of the Code of Federal Regulations, 40 C.F.R. 60.624, and Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2002);

3. Ordering Respondents to cease and desist from further violations of Section 60.624 of Title 40 of the Code of Federal Regulations, 40 C.F.R. 60.624, and Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2002);

4. Assessing against Respondents a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and pertinent Board Air Pollution Regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Taxing all costs in this action pursuant to Section 42(f) of the Act, including attorney, expert witness and consultant fees, against Respondents; and

6. Granting such other relief as the Board deems appropriate and just.

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

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

By: Rose Marie Cazeau  
ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

Of Counsel:

JOEL J. STERNSTEIN  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St., 20<sup>th</sup> Floor  
Chicago, Illinois 60601  
(312) 814-6986

H:\common\Environmental\JOEL\Case Documents\Draw Drape\amended-complaint-final.wpd

CERTIFICATE OF SERVICE

I, JOEL J. STERNSTEIN, an Assistant Attorney General, certify that on the 30<sup>th</sup> day of December 2003, I caused to be served by First Class Mail the foregoing AMENDED COMPLAINT FOR CIVIL PENALTIES to the parties named on the attached service list, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.



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JOEL J. STERNSTEIN

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

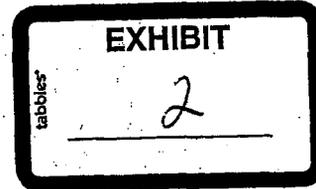
RECEIVED  
CLERK'S OFFICE

JUN 27 2003

PEOPLE OF THE STATE OF ILLINOIS, )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 DRAW DRAPE CLEANERS, INC., )  
 an Illinois corporation, )  
 )  
 Respondent. )

STATE OF ILLINOIS  
Pollution Control Board

No. PCB 03-51



NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on June 27, 2003, the People of the State of Illinois filed with the Illinois Pollution Control Board COMPLAINANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT, true and correct copies of which are attached and hereby served upon you.

Respectfully submitted,

LISA MADIGAN  
Attorney General  
State of Illinois

BY:

Joel J. Sternstein  
JOEL J. STERNSTEIN  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St., 20th Floor  
Chicago, Illinois 60601  
(312) 814-6986

SERVICE LIST

Mr. Bradley Halloran, Esq.  
Illinois Pollution Control Board  
100 W. Randolph Street, Suite 11-500  
Chicago, Illinois 60601

Ms. Maureen Wozniak, Esq.  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62702

Ms. Michele Rocawich, Esq.  
Weissberg and Associates, Ltd.  
401 S. LaSalle Street, Suite 403  
Chicago, Illinois 60605

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED  
CLERK'S OFFICE

JUN 27 2003

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS, )  
ex rel. LISA MADIGAN, Attorney )  
General of the State of Illinois )  
Complainant, )  
v. )  
DRAW DRAPE CLEANERS, INC., )  
an Illinois corporation, )  
Respondent. )

No. PCB 03-51

COMPLAINANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, ex rel. LISA MADIGAN, Attorney General of the State of Illinois, and pursuant to Section 101.516 of the Illinois Pollution Control Board Procedural Regulations, 35 Ill. Adm. Code 101.516, hereby moves for the entry of an order granting summary judgment in favor of the Complainant and against Respondent DRAW DRAPE CLEANERS INC.

INTRODUCTION

An eight-count complaint was filed in this matter on October 15, 2002. A copy of which is attached hereto and incorporated herein as Exhibit A. This complaint involves a petroleum solvent dry cleaning facility operated by Respondent located at 2235-2239 West Roscoe Street, Chicago, Cook County, Illinois. Complainant seeks summary judgement against Respondent on four of the eight counts: Count IV, construction of an emissions source without a permit; Count V, operation of an emissions source without a permit; Count VII, installation of a non-solvent recovery dryer

and lack of a cartridge filter; and Count VIII, failure to perform an initial flow rate test on Dryer #2.

Complainant served Respondent with written discovery on April 11, 2003, including a First Request for Admission of Facts. Respondent subsequently served Plaintiff with responses to written discovery including Draw Drape Cleaners Response to First Request to Admit ("Response"). In the Response, Respondent admitted many facts pertinent to the alleged violations in the Complaint. The Response is attached hereto and incorporated herein as Exhibit B.

Respondent admitted that it failed to secure the required construction and operating permits for Dryer #2 at its facility. Respondent also admitted that Dryer #2 is not a solvent recovery dryer and that Dryer #2 lacks a cartridge filter. Furthermore, Respondent admitted that it failed to perform an initial flow rate test on Dryer #2. There are no material questions of fact or law with respect to Counts IV, V, VII, and VIII of the Complaint. Complainant is entitled to summary judgment on those Counts.

#### SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when the pleadings, depositions, admissions on file, and affidavits disclose there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Dowd & Dowd, Ltd. v.

Gleason, 181 Ill.2d 460, 483, 693 N.E.2d 358, 370 (1998). Use of summary judgment procedure is to be encouraged as an aid in expeditious disposition of lawsuits; however, it is drastic means of disposing of litigation and should be allowed only when the right of the moving party is clear and free of doubt. Gilbert v. Sycamore Municipal Hospital, 156 Ill.2d 511, 518, 622 N.E.2d 788, 792 (1993). Although summary judgment is drastic, the instant case is tailor made for this type of disposition and resolution. Furthermore, using summary judgment as a means of finding Respondent liable for violations of the laws and regulations as alleged in Counts IV, V, VII, and VIII will limit the future proceedings by the Complainant against Respondent and will dispose of a portion of the lawsuit. Complainant's right to summary judgment on Counts IV, V, VII, and VIII is clear and free of doubt. This is an appropriate use of summary judgment.

ADMITTED BACKGROUND FACTS AND BACKGROUND LAW

At all times relevant to the complaint, Respondent was/is an Illinois corporation in good standing and was/is the operator of a petroleum solvent dry cleaning facility (facility) for cleaning drapes. Admitted by Respondent in Exhibit B - Response Nos. 1, 2, 3.

Respondent installed Dryer #2 at the facility in 1996 and operated Dryer #2 until sometime in 2001 or 2002. Respondent used Dryer #2 to dry clean drapes after it was installed. Dryer

#2 also lacks a cartridge filter. Dryer #2 emitted volatile organic material ("VOM", also known as volatile organic compounds) to the environment after it was installed until sometime in 2001 or 2002. Admitted by Respondent in Exhibit B - Response Nos. 6, 7, 8, 11.

Section 3.315 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/3.315 (2002), provides the following definition:

"Person" is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

Respondent is a "person" as the term is defined in Section 3.315 of the Act.

#### ARGUMENT - COUNTS IV AND V

The Act and the Illinois Pollution Control Board ("Board") Air Pollution Regulations state that no person shall construct or operate an emissions source without first obtaining proper permits from the Illinois Environmental Protection Agency ("Agency"). Count IV of the Complaint alleges that Respondent constructed an emissions source without a permit while Count V of the Complaint alleges that Respondent operated an emissions source without a permit.

Section 9(b) of the Act, 415 ILCS 5/9(b) (2002), provides as

follows:

No person shall:

\* \* \*

(b) Construct, install, or operate any equipment, facility, vehicle, vessel, or aircraft capable of causing or contributing to air pollution or designed to prevent air pollution, of any type designated by Board regulations, without a permit granted by the Agency, or in violation of any conditions imposed by such permit.

Section 3.115 of the Act, 415 ILCS 5/3.115 (2002), provides the following definition:

"Air pollution" is the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

Section 3.165 of the Act, 415 ILCS 5/3.165 (2002), provides the following definition:

"Contaminant" is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

VOM is a contaminant, as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2002). Dryer #2 is equipment that is capable of causing or contributing to air pollution since it is a source of VOM.

Section 201.142 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.142, provides as follows:

### Construction Permit Required

No person shall cause or allow the construction of any new emission source or any new air pollution control equipment, or cause or allow the modification of any existing emission source or air pollution control equipment, without first obtaining a construction permit from the Agency, except as provided in Section 201.146.

Section 201.143 of the Board Air Pollution Regulations, 35

Ill. Adm. Code 201.143, provides, in pertinent part, as follows:

#### Operating Permit for New Sources

No person shall cause or allow the operation of any new emission source or new air pollution control equipment of a type for which a construction permit is required by Section 201.142 without first obtaining an operating permit from the Agency, except for such testing operations as may be authorized by the construction permit.

Section 201.102 of the Board Air Pollution Regulations, 35

Ill. Adm. Code 201.102, provides, in pertinent part, the following definitions:

"Emission Source": any equipment or facility of a type capable of emitting specified air contaminants to the atmosphere.

\* \* \*

"New Emission Source": any emission source, the construction or modification of which is commenced on or after April 14, 1972.

\* \* \*

"Specified Air Contaminant": any air contaminant as to which this Subtitle contains emission standards or other specific limitations and any contaminant regulated

Illinois pursuant to Section 9.1 of the Act.

VOM is a "specified air contaminant" as defined by Section 201.102 of the Board Air Pollution Regulations. Dryer #2 is a "new emission source" as that term is defined by Section 201.102 of the Board Air Pollution Regulations because it is capable of emitting VOM.

Respondent installed Dryer #2 at its facility without first obtaining a permit from the Agency. Admitted by Respondent in Exhibit B - Response No. 40. In addition, Respondent operated Dryer #2 without first obtaining a permit from the Agency. Admitted by Respondent in Exhibit B - Response No. 41. (Note that the year "2996" in Response No. 41 is obviously a typo and should be "1996" which is what the corresponding No. 41 is in the Complainant's First Request for Admission of Facts - See Exhibit C.)

Thus, Respondent violated Section 9(b) of the Act and Sections 201.142 and 201.143 of the Board Air Pollution Regulations as alleged in Counts IV and V of the Complaint. Summary judgment for Counts IV and V of the Complaint should be awarded to Complainant.

#### ARGUMENT - COUNTS VII AND VIII

The Act and the associated provisions in the Code of Federal Regulations state that petroleum dry cleaners may only use solvent recovery dryers with cartridge filters. In addition, the

dry cleaner must do an initial test on the dryer to verify flow rate of recovered solvent. Count VII of the Complaint alleges that Respondent did not install a solvent recovery dryer with a cartridge filter while Count VIII of the Complaint alleges that Respondent did not perform the initial test.

Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2002), provides, in pertinent part, as follows:

No person shall:

- (1) violate any provisions of Sections 111, 112, 165 or 173 of the Clean Air Act, as now or hereafter amended, or federal regulations adopted pursuant thereto; or
- (2) construct, install, modify or operate any equipment, building, facility, source or installation which is subject to regulation under Sections 111, 112, 165 or 173 of the Clean Air Act, as now or hereafter amended, except in compliance with the requirements of such Sections and federal regulations adopted pursuant thereto, and no such action shall be undertaken without a permit granted by the Agency or in violation of any conditions imposed by such permit.

Sections 60.620 to 60.625 of Title 40 of the Code of Federal Regulations, 40 C.F.R. 60.620-60.625, were adopted pursuant to Section 111 of the Clean Air Act. Sections 60.620 to 60.625 of Title 40 of the Code of Federal Regulations set standards of performance for petroleum dry cleaners. Section 60.622 of Title 40 of the Code of Federal Regulations, 40 C.F.R. 60.622, provides, in pertinent part, as follows:

Standards for volatile organic compounds

(a) Each affected petroleum solvent dry cleaning dryer that is installed at a petroleum dry cleaning plant after December 14, 1982, shall be a solvent recovery dryer. The solvent recovery dryer(s) shall be properly installed, operated and maintained.

(b) Each affected petroleum solvent filter that is installed at a petroleum dry cleaning plant after December 14, 1982, shall be a cartridge filter. Cartridge filters shall be drained in their sealed housings for at least 8 hours prior to their removal.

Respondent installed Dryer #2 in 1996, well after December 14, 1982. Dryer #2 is not a solvent recovery dryer, and it lacks a cartridge filter. Admitted by Respondent in Exhibit B - Response No. 17 and 19.

Section 60.624 of Title 40 of the Code of Federal Regulations, 40 C.F.R. 60.624, provides, in pertinent part, as follows:

Test methods and procedures

Each owner or operator of an affected facility subject to the provisions of §60.622(a) shall perform an initial test to verify that the flow rate of recovered solvent from the solvent recovery dryer at the termination of the recovery cycle is no greater than 0.05 liters per minute. This test shall be conducted for a duration of no less than 2 weeks during which no less than 50 percent of the dryer loads shall be monitored for their final recovered solvent flow rate.

Respondent did not initially test Dryer #2 to verify the flow rate of recovered solvent after Dryer #2 was installed in

1996. Admitted by Respondent in Exhibit B - Response Nos. 45, 46, and 47.

In its Responses addressing the test for the verification of flow rate of recovered solvent in Dryer #2, Respondent claimed that there was no test available. Complainant assumes that Respondent is referring to a commercially available test or a test performed by a technical consultant for the verification of flow rate. The remainder of Section 60.624 of Title 40 of the Code of Federal Regulations spells out the manner in which the test is to be conducted:

The suggested point for measuring the flow rate of recovered solvent is the outlet of the solvent-water separator. Near the end of the recovery cycle, the entire flow of recovered solvent should be diverted to a graduated cylinder. As the recovered solvent collects in the graduated cylinder, the elapsed time is monitored and recorded in periods of greater than or equal to 1 minute. At the same time, the volume of solvent in the graduated cylinder is monitored and recorded to determine the volume of recovered solvent that is collected during each time period. The recovered solvent flow rate is calculated by dividing the volume of solvent collected per period by the length of time elapsed during the period and converting the result with appropriate factors into units of liters per minute. The recovery cycle and the monitoring procedure should continue until the flow rate of solvent is less than or equal to 0.05 liter per minute. The type of articles cleaned and the total length of the cycle should then be recorded.

Respondent would have only required a graduated cylinder, a

stopwatch, pen and paper, a knowledge of simple arithmetic, and time to measure every other dryer load for two weeks. Respondent cannot hide behind the excuse that a test was not available since Respondent's owners, operators, or employees could have easily performed this simple test.

For the sake of argument, even if the test was complicated, such circumstances would not excuse Respondent from performing the test. Respondent failed to perform the test by its own admission and thereby violated the Act and the Code of Federal Regulations.

Thus, Respondent violated Sections 60.622 and 60.624 of Title 40 of the Code of Federal Regulations and Section 9.1(d) of the Act as alleged in Counts VII and VIII of the Complaint. Summary judgment for Counts VII and VIII of the Complaint should be awarded to Complainant.

#### CONCLUSION

WHEREFORE, for the foregoing reasons, Complainant respectfully request the Board to:

1. Enter an order granting summary judgment for Complainant and against Respondent for Counts IV, V, VII, and VIII in the Complaint filed with the Board in this matter;
2. Order that Respondent is liable for penalties for violations of the Act, the Board Air Pollution Regulations, and the Code of Federal Regulations;

3. Assess the Attorney General's fees and costs in this case against Respondent; and
4. Order any other relief it deems just and appropriate.

Respectfully submitted,

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

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

By:



JOEL STERNSTEIN  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St. 20th Fl.  
Chicago, Illinois 60601  
(312) 814-6986

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

OCT 15 2002

PEOPLE OF THE STATE OF ILLINOIS, )  
by JAMES E. RYAN, Attorney )  
General of the State of Illinois )

STATE OF ILLINOIS  
Pollution Control Board

Complainant, )

v. )

No. PCB 03-51

DRAW DRAPE CLEANERS, INC., )  
an Illinois corporation, )

Respondent. )

EXHIBIT A

NOTICE OF FILING

TO: See Attached Service List

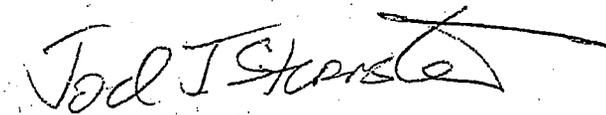
PLEASE TAKE NOTICE that on October 15, 2002, the People of the State of Illinois filed with the Illinois Pollution Control Board a Complaint, true and correct copies of which are attached and hereby served upon you.

Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office, or an attorney.

Respectfully submitted,

JAMES E. RYAN  
Attorney General  
State of Illinois

BY:



JOEL J. STERNSTEIN  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St., 20th Floor  
Chicago, Illinois 60601  
(312) 814-6986

SERVICE LIST

Mr. Richard Zell  
Draw Drape Cleaners  
2235 West Roscoe  
Chicago, Illinois 60618

Ms. Maureen Wozniak, Esq.  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62702

RECEIVED  
CLERK'S OFFICE  
OCT 15 2002  
STATE OF ILLINOIS  
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, )  
by JAMES E. RYAN, Attorney )  
General of the State of Illinois )  
Complainant, )  
v. )  
DRAW DRAPE CLEANERS, INC., )  
an Illinois corporation, )  
Respondent. )

No. PCB 03-51

COMPLAINT FOR CIVIL PENALTIES

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by JAMES E. RYAN, Attorney General of the State of Illinois, complains of Respondent, DRAW DRAPE CLEANERS, INC., as follows:

COUNT I

AIR POLLUTION

1. This Complaint is brought on behalf of the People ("Complainant") by the Attorney General on his own motion and upon the request of the Illinois Environmental Protection Agency ("Illinois EPA") pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(2002).

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2002), and charged, *inter alia*, with the duty of enforcing the Act. This Complaint is brought pursuant to Section 31 of the Act, 415 ILCS 5/31(2002).

3. At all times relevant to this Complaint, DRAW DRAPE CLEANERS, INC. ("Respondent") was and is an Illinois corporation duly organized and existing under the laws of the State of Illinois and is in good standing.

4. At all times relevant to this Complaint, Respondent has operated a facility located at 2235-2239 West Roscoe Street, Chicago, Cook County, Illinois, 60618 ("facility").

5. Respondent operates a petroleum solvent dry cleaning operation at its facility to clean drapes.

6. Respondent installed Dryer #1 at its facility in 1980 and continues to operate Dryer #1. Dryer #1 is a petroleum solvent dryer, but it is not a solvent recovery dryer. Dryer #1 lacks a cartridge filter.

7. Respondent installed Dryer #2 at the facility in 1996 and continues to operate Dryer #2. Dryer #2 is a petroleum solvent dryer, but it is not a solvent recovery dryer. Dryer #2 lacks a cartridge filter.

8. Both Dryer #1 and Dryer #2 emit volatile organic material ("VOM") to the environment.

9. Section 3.315 of the Act, 415 ILCS 5/3.315 (2002), provides the following definition:

"Person" is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or

their legal representative, agent or assigns.

10. Respondent is a "person" as the term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2002).

11. Section 3.165 of the Act, 415 ILCS 5/3.165 (2002), provides the following definition:

"Contaminant" is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

12. VOM is a contaminant, as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2002).

13. Section 3.115 of the Act, 415 ILCS 5/3.115 (2002), provides the following definition:

"Air pollution" is the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

14. Section 9(a) of the Act, 415 ILCS 5/9(a) (2002), provides as follows:

No person shall:

(a) Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, so as to violate regulations or standards adopted by the Board under this Act;

15. Section 201.141 of the Illinois Pollution Control Board

("Board") Air Pollution Regulations, 35 Ill. Adm. Code 201.141, provides as follows:

Section 201.141 Prohibition of Air Pollution

No person shall cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as, either alone or in combination with contaminants from other sources, to cause or tend to cause air pollution in Illinois, or so as to violate the provisions of this Chapter, or so as to prevent the attainment or maintenance of any applicable ambient air quality standard.

16. Respondent has emitted VOM into the atmosphere from Dryer #1 and Dryer #2 causing air pollution in violation of its Federally Enforceable State Operating Permit ("FESOP"), in violation of the Act, and in violation of the Board's regulations.

17. Respondent, by its conduct alleged herein, violated Section 9(a) of the Act, 415 ILCS 5/9(a)(2002), and Section 201.141 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.141.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter a judgment in favor of Complainant and against Respondent, DRAW DRAPE CLEANERS, INC., on Count I:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;

2. Finding that Respondent has violated Section 9(a) of

the Act, 415 ILCS 5/9(a)(2002), and Section 201.141 of the Board Air Pollution Regulation, 35 Ill. Adm. Code 201.141;

3. Ordering Respondent to cease and desist from further violations of Section 9(a) of the Act, 415 ILCS 5/9(a)(2002), and Section 201.141 of the Board Air Pollution Regulation, 35 Ill. Adm. Code 201.141;

4. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and pertinent Board Air Pollution Regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Taxing all costs in this action pursuant to Section 42(f) of the Act, including attorney, expert witness and consultant fees, against Respondent; and

6. Granting such other relief as the Board deems appropriate and just.

#### COUNT II

#### VIOLATION OF STANDARDS FOR PETROLEUM SOLVENT DRY CLEANERS

1 - 14. Complainant realleges and incorporates by reference herein paragraphs 1 through 14 of Count I as paragraphs 1 through 13 of this Count II.

15. Section 218.607 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.607, provides as follows:

## Standards for Petroleum Solvent Dry Cleaners

a) The owner or operator of a petroleum solvent dry cleaning dryer shall either:

- 1) Limit emissions of VOM to the atmosphere to an average of 3.5 kilograms of VOM per 100 kilograms dry weight of articles dry cleaned, or
- 2) Install and operate a solvent recovery dryer in a manner such that the dryer remains closed and the recovery phase continues until a final solvent flow rate of 50 milliliters per minute is attained.

b) The owner or operator of a petroleum solvent filtration system shall either:

- 1) Reduce the VOM content in all filtration wastes to 1.0 kilogram or less per 100 kilograms dry weight of articles dry cleaned, before disposal, and exposure to the atmosphere, or
- 2) Install and operate a cartridge filtration system, and drain the filter cartridges in their sealed housings for 8 hours or more before their removal.

16. For both Dryer #1 and Dryer #2, Respondent has failed to limit VOM emissions to the atmosphere to an average of 3.5 kilograms of VOM per 100 kilograms dry weight articles cleaned.

17. Neither Dryer #1 nor Dryer #2 are solvent recovery dryers.

18. For both Dryer #1 and Dryer #2, Respondent has failed to reduce VOM content in all filtration wastes to 1.0 kilogram or less per 100 kilograms of articles dry cleaned, before disposal,

and exposure to the atmosphere.

19. Neither Dryer #1 nor Dryer #2 have a cartridge filtration system.

20. Respondent, by its conduct as alleged herein, violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2002), and Section 218.607 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.607.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter a judgment in favor of Complainant and against Respondent, DRAW DRAPE CLEANERS, INC., on Count II:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;

2. Finding that Respondent has violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2002), and Section 218.607 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.607;

3. Ordering Respondent to cease and desist from further violations of Section 9(a) of the Act, 415 ILCS 5/9(a) (2002), and Section 218.607 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.607;

4. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and pertinent Board Air Pollution Regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day

of violation;

5. Taxing all costs in this action pursuant to Section 42(f) of the Act; including attorney, expert witness and consultant fees, against Respondent; and

6. Granting such other relief as the Board deems appropriate and just.

### COUNT III

#### FAILURE TO CONDUCT ADEQUATE TESTING

1 - 14. Complainant realleges and incorporates by reference herein paragraphs 1 through 14 of Count I as paragraphs 1 through 14 of this Count III.

15. Section 218.610 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.610, provides as follows:

##### Testing and Monitoring

a) Compliance with Sections 218.607(b)(2), 218.608 and 218.609 of this Part shall be determined by visual inspection; and

b) Compliance with Sections 218.607(a)(2) and (b)(1) of this Part shall be determined by methods described in EPA-450/3-82-009 (1982) incorporated by reference in Section 218.112 of this Part.

16. Section 218.607 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.607, sets standards for petroleum solvent dry cleaning operations.

17. Respondent has failed to visually inspect both Dryer #1 and Dryer #2 in order to demonstrate compliance with the

requirements of Section 218.607(b)(2) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.607(b)(2).

18. Respondent has failed to follow the methods described in EPA-450/3-82-009 (1982) in order to demonstrate compliance with Sections 218.607(a)(2) and 218.607(b)(1) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.607(a)(2) and (b)(1), for both Dryer #1 and Dryer #2.

19. Respondent, by its conduct as alleged herein, violated Section 9(a) of the Act, 415 ILCS 5/9(a)(2002), and Section 218.610 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.610.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter a judgment in favor of Complainant and against Respondent, DRAW DRAPE CLEANERS, INC., on Count III:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;

2. Finding that Respondent has violated Section 9(a) of the Act, 415 ILCS 5/9(a)(2002), and Section 218.610 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.610;

3. Ordering Respondent to cease and desist from further violations of Section 9(a) of the Act, 415 ILCS 5/9(a)(2002), and Section 218.610 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.610;

4. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and pertinent Board Air Pollution Regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Taxing all costs in this action pursuant to Section 42(f) of the Act, including attorney, expert witness and consultant fees, against Respondent; and

6. Granting such other relief as the Board deems appropriate and just.

#### COUNT IV

##### CONSTRUCTION OF AN EMISSIONS SOURCE WITHOUT A PERMIT

1-12. Complainant realleges and incorporates by reference herein paragraphs 1 through 12 of Count I as paragraphs 1 through 12 of this Count IV.

13. Section 9(b) of the Act, 415 ILCS 5/9(b) (2002), provides as follows:

No person shall:

\* \* \*

(b) Construct, install, or operate any equipment, facility, vehicle, vessel, or aircraft capable of causing or contributing to air pollution or designed to prevent air pollution, of any type designated by Board regulations, without a permit granted by the Agency, or in violation of any conditions imposed by such permit.

14. Section 201.102 of the Illinois Pollution Control Board

("Board") Air Pollution Regulations, 35 Ill. Adm. Code 201.102, provides, in pertinent part, the following definitions:

"Emission Source": any equipment or facility of a type capable of emitting specified air contaminants to the atmosphere.

"New Emission Source": any emission source, the construction or modification of which is commenced on or after April 14, 1972.

"Specified Air Contaminant": any air contaminant as to which this Subtitle contains emission standards or other specific limitations and any contaminant regulated Illinois pursuant to Section 9.1 of the Act.

15. VOM is a specified air contaminant as defined by Section 201.102 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.102.

16. Dryer #2 is a "new emission source" as that term is defined by Section 201.102 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.102 because it is capable of emitting VOM.

17. Section 201.142 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.142, provides as follows:

**Section 201.142 Construction Permit Required**

No person shall cause or allow the construction of any new emission source or any new air pollution control equipment, or cause or allow the modification of any existing emission source or air pollution control equipment, without first obtaining a construction permit from the Agency, except as provided in Section 201.146.

18. Respondent installed Dryer #2 at its facility without

first obtaining a permit from the Illinois EPA.

19. Respondent, by its conduct as alleged herein, violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2002), and Section 201.142 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.142.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter a judgment in favor of Complainant and against Respondent, DRAW DRAPE CLEANERS, INC., on Count IV:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent has violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2002), and Section 201.142 of the Board Air Pollution Regulation, 35 Ill. Adm. Code 201.142;
3. Ordering Respondent to cease and desist from further violations of Section 9(b) of the Act, 415 ILCS 5/9(b) (2002), and Section 201.142 of the Board Air Pollution Regulation, 35 Ill. Adm. Code 201.142;
4. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and pertinent Board Air Pollution Regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Taxing all costs in this action pursuant to Section

42(f) of the Act, including attorney, expert witness and consultant fees, against Respondent; and

6. Granting such other relief as the Board deems appropriate and just.

#### COUNT V

##### OPERATION OF AN EMISSIONS SOURCE WITHOUT A PERMIT

1-16. Complainant realleges and incorporates by reference herein paragraphs 1 through 16 of Count IV as paragraphs 1 through 16 of this Count V.

17. Section 201.143 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.143, provides, in pertinent part, as follows:

##### Operating Permit for New Sources

No person shall cause or allow the operation of any new emission source or new air pollution control equipment of a type for which a construction permit is required by Section 201.142 without first obtaining an operating permit from the Agency, except for such testing operations as may be authorized by the construction permit.

18. Since 1996, Respondent has operated and continues to operate Dryer #2 without first obtaining a permit from the Illinois EPA.

19. Respondent, by its conduct as alleged herein, violated Section 201.143 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.143, and Section 9(b) of the Act, 415 ILCS 5/9(b) (2002).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter a judgment in favor of Complainant and against Respondent, DRAW DRAPE CLEANERS, INC., on Count V:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;

2. Finding that Respondent has violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2002), and Section 201.143 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.143;

3. Ordering Respondent to cease and desist from further violations of Section 9(b) of the Act, 415 ILCS 5/9(b) (2002), and Section 201.143 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.143;

4. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and pertinent Board Air Pollution Regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Taxing all costs in this action pursuant to Section 42(f) of the Act, including attorney, expert witness and consultant fees, against Respondent; and

6. Granting such other relief as the Board deems appropriate and just.

COUNT VI

VIOLATION OF FESOP CONDITION 5

1-14. Complainant realleges and incorporates by reference herein paragraphs 1 through 14 of Count IV as paragraphs 1 through 14 of this Count VI.

15. Respondent was granted a FESOP to operate its emissions sources. The FESOP was granted on January 13, 1998 and expires on January 13, 2003.

16. Respondent's FESOP, No. 95100005, provides, in pertinent part, the following condition:

\* \* \*

5. The Permittee shall comply with the standards, operating practices, inspections and repair of leaks, and the testing and monitoring requirements for petroleum solvent dry cleaners as specified in 35 Ill. Adm. Code 218.607 through 218.610.

17. By violating the Board Air Pollution Regulations at Sections 218.607 and 218.610, 35 Ill. Adm. Code 218.607 and 218.610, Respondent also violated Condition No. 5 of its FESOP No. 95100005. By violating Condition No. 5 of its FESOP No. 95100005, Respondent also violated 9(b) of the Act, 415 ILCS 5/9(b) (2002).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter a judgment in favor of Complainant and against Respondent, DRAW DRAPE CLEANERS, INC., on

Count VI:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent has violated Condition 5 of FESOP No. 95100005, and Section 9(b) of the Act, 415 ILCS 5/9(b) (2002);
3. Ordering Respondent to cease and desist from further violations of Condition 5 of FESOP No. 95100005, Section 9(b) of the Act, 415 ILCS 5/9(b) (2002);
4. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and pertinent Board Air Pollution Regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Taxing all costs in this action pursuant to Section 42(f) of the Act, including attorney, expert witness and consultant fees, against Respondent; and
6. Granting such other relief as the Board deems appropriate and just.

COUNT VII

INSTALLATION OF A NON-SOLVENT RECOVERY DRYER  
AND LACK OF A CARTRIDGE FILTER ON DRYER #2

1-10. Complainant realleges and incorporates by reference herein paragraphs 1 through 10 of Count I as paragraphs 1 through 10 of this Count VII.

11. Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2002), provides, in pertinent part, as follows:

No person shall:

(1) violate any provisions of Sections 111, 112, 165 or 173 of the Clean Air Act, as now or hereafter amended, or federal regulations adopted pursuant thereto; or

(2) construct, install, modify or operate any equipment, building, facility, source or installation which is subject to regulation under Sections 111, 112, 165 or 173 of the Clean Air Act, as now or hereafter amended, except in compliance with the requirements of such Sections and federal regulations adopted pursuant thereto, and no such action shall be undertaken without a permit granted by the Agency or in violation of any conditions imposed by such permit.

12. Sections 60.620 to 60.625 of Title 40 of the Code of Federal Regulations, 40 C.F.R. 60.620-60.625, were adopted pursuant to Section 111 of the Clean Air Act.

13. Sections 60.620 to 60.625 of Title 40 of the Code of Federal Regulations, 40 C.F.R. 60.620-60.625, set standards of performance for petroleum dry cleaners.

14. Section 60.622 of Title 40 of the Code of Federal Regulations, 40 C.F.R. 60.622 provides, in pertinent part, as follows:

**Standards for volatile organic compounds**

(a) Each affected petroleum solvent dry cleaning dryer that is installed at a petroleum dry cleaning plant after December 14, 1982, shall be a solvent recovery dryer. The solvent recovery dryer(s) shall be

properly installed, operated and maintained.

(b) Each affected petroleum solvent filter that is installed at a petroleum dry cleaning plant after December 14, 1982, shall be a cartridge filter. Cartridge filters shall be drained in their sealed housings for at least 8 hours prior to their removal.

15. Dryer #2 was installed after December 14, 1982. It is not a solvent recovery dryer, and it lacks a cartridge filter.

16. Respondent, by its conduct as alleged herein, violated Section 60.622 of Title 40 of the Code of Federal Regulations, 40 C.F.R. 60.622, and Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2002).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter a judgment in favor of Complainant and against Respondent, DRAW DRAPE CLEANERS, INC., on Count VII:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent has violated Section 60.622 of Title 40 of the Code of Federal Regulations, 40 C.F.R. 60.622, and Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2002);
3. Ordering Respondent to cease and desist from further violations of Section 60.622 of Title 40 of the Code of Federal Regulations, 40 C.F.R. 60.622, and Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2002);
4. Assessing against Respondent a civil penalty of Fifty

Thousand Dollars (\$50,000.00) for each violation of the Act and pertinent Board Air Pollution Regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Taxing all costs in this action pursuant to Section 42(f) of the Act, including attorney, expert witness and consultant fees, against Respondent; and

6. Granting such other relief as the Board deems appropriate and just.

#### COUNT VIII

##### FAILURE TO PERFORM AN INITIAL FLOW RATE TEST ON DRYER #2

1 - 15. Complainant realleges and incorporates by reference herein paragraphs 1 through 15 of Count VII as paragraphs 1 through 16 of this Count VIII.

16. Section 60.624 of Title 40 of the Code of Federal Regulations, 40 C.F.R. 60.624, provides, in pertinent part, as follows:

##### Test methods and procedures

Each owner or operator of an affected facility subject to the provisions of §60.622(a) shall perform an initial test to verify that the flow rate of recovered solvent from the solvent recovery dryer at the termination of the recovery cycle is no greater than 0.05 liters per minute. This test shall be conducted for a duration of no less than 2 weeks during which no less than 50 percent of the dryer loads shall be monitored for their final recovered solvent flow rate.

17. Respondent did not initially test Dryer #2 to verify the flow rate of recovered solvent after Dryer #2 was installed in 1996.

18. Respondent, by its conduct as alleged herein, violated Section 60.624 of Title 40 of the Code of Federal Regulations, 40 C.F.R. 60.624, and Section 9.1(d) of the Act, 415 ILCS 5/9.1(d)(2002).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter a judgment in favor of Complainant and against Respondent, DRAW DRAPE CLEANERS, INC., on Count VIII:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent has violated Section 60.624 of Title 40 of the Code of Federal Regulations, 40 C.F.R. 60.624, and Section 9.1(d) of the Act, 415 ILCS 5/9.1(d)(2002);
3. Ordering Respondent to cease and desist from further violations of Section 60.624 of Title 40 of the Code of Federal Regulations, 40 C.F.R. 60.624, and Section 9.1(d) of the Act, 415 ILCS 5/9.1(d)(2002);
4. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and pertinent Board Air Pollution Regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day

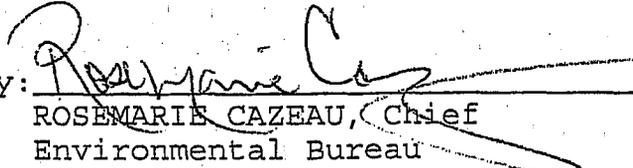
of violation;

5. Taxing all costs in this action pursuant to Section 42(f) of the Act, including attorney, expert witness and consultant fees, against Respondent; and

6. Granting such other relief as the Board deems appropriate and just.

PEOPLE OF THE STATE OF ILLINOIS,  
ex rel. JAMES E. RYAN, Attorney  
General of the State of Illinois

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

By: 

ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

Of Counsel:

JOEL J. STERNSTEIN  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St., 20<sup>th</sup> Floor  
Chicago, Illinois 60601  
(312) 814-6986

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CERTIFICATE OF SERVICE

I, JOEL J. STERNSTEIN, an Assistant Attorney General, certify that on the 15th day of October, 2002, I caused to be served by First Class Mail the foregoing Complaint to the parties named on the attached service list, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.



---

JOEL J. STERNSTEIN

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS )  
)  
Complainant, )  
)  
DRAW DRAPE CLEANERS, INC., )  
an Illinois corporation, )  
)  
Respondent: )

No. PCB 03-51  
(Enforcement - Air)

Exhibit B

DRAW DRAPE CLEANERS' RESPONSE  
TO FIRST REQUEST TO ADMIT

To: Ms. Maureen Wozniak, Esq.  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Springfield, Illinois 62702  
Telephone: (217)-782-5544  
Fax: (217) 782-9807

Joel J. Sternstein  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St.  
20<sup>th</sup> Floor  
Chicago, Illinois 60601  
Telephone: (312)-814-6986  
Fax: (312) 814-2347

Respondent Draw Drape Cleaners, Inc. (collectively "Respondent"), by their attorneys, Weissberg and Associates, Ltd., respond to Complainant's First Request for Admission of Facts on Respondent Draw Drape Cleaners, Inc. ("Requests"), and states:

1. Please admit that at all times relevant to the Complaint, Respondent was and is an Illinois corporation duly organized and existing under the laws of the State of Illinois and is in good standing.

RESPONSE: Admit

2. Please admit that at all times relevant to the Complaint, Respondent has operated the facility.

RESPONSE: Admit

3. Please admit that Respondent operates a petroleum solvent dry cleaning operation at its facility to clean drapes.

**RESPONSE:** Admit

4. Please admit that Respondent installed Dryer #1 at the facility sometime prior to 1981 and continues to operate Dryer #1.

**RESPONSE:** Admit

5. Please admit that Dryer #1 emitted VOM into the air from the time that it was installed until the present.

**RESPONSE:** Admit

6. Please admit that Respondent installed Dryer #2 at the facility in 1996 and continues to operate Dryer #2.

**RESPONSE:** Respondent admits they operated Dryer #2 until the IPA Inspector told Respondent that Dryer #2 was in violation, Respondent denies that they continue to operate Dryer #2.

7. Please admit that Dryer #2 emitted VOM after it was installed until sometime in 2001 or 2002.

**RESPONSE:** Admit

8. Please admit that Dryer #2 was used to dry clean drapes from the time it was installed until sometime in 2001 or 2002.

**RESPONSE:** Respondents admits Dryer #2 was used occasionally to dry clean drapes but states it was mainly used to fluff materials before pressing.

9. Please admit that Dryer #2 has only been used for "fluffing" drapes since sometime in 2001 or 2002.

**RESPONSE:** Admit

10. Please admit that Dryer #1 is a petroleum solvent dryer.

**RESPONSE:** Admit

11. Please admit that Dryer #2 is a petroleum solvent dryer.

**RESPONSE:** Admit

12. Please admit that Respondent uses naphtha as a solvent in its dry cleaning operations in Dryer #1.

**RESPONSE:** Admit

13. Please admit that Respondent used naphtha as a solvent in its dry cleaning operations in Dryer #2 at those times when it performed dry cleaning operations in Dryer #2.

**RESPONSE:** Admits that naphtha was used occasionally in Dryer #2

14. Please admit that vapors from Dryer #1 have never been recovered.

**RESPONSE:** Admit

15. Please admit that vapors from Dryer #2 have never been recovered.

**RESPONSE:** Admit

16. Please admit that Dryer #1 is not a solvent recovery dryer.

**RESPONSE:** Admit

17. Please admit that Dryer #2 is not a solvent recovery dryer.

**RESPONSE:** Admit

18. Please admit that Dryer #1 lacks a cartridge filter.

**RESPONSE:** Admit

19. Please admit that Dryer #2 lacks a cartridge filter.

**RESPONSE:** Admit

20. Please admit that an Illinois EPA inspector was at the facility on January 17, 2001.

**RESPONSE:** Admit

21. Please admit that an Illinois EPA inspector was at the facility on March 29, 2001.

**RESPONSE:** Respondent neither admits nor denies the allegations in ¶ 21 due to lack of knowledge.

22. Please admit that the current registered agent for Draw Drape is Richard J. Zell.

**RESPONSE:** Admit

23. Please admit that the current president of Draw Drape is Steven M. Press.

**RESPONSE:** Admit

24. Please admit that Steven M. Press owns 50% of the Roscoe Street Partnership.

**RESPONSE:** Admit

25. Please admit that Richard J. Zell owns 50% of the Roscoe Street partnership.

**RESPONSE:** Admit

26. Please admit that Steven M. Press owns 50% of the Illinois corporation "American Drapery Cleaners and Flameproofers, Inc."

**RESPONSE:** Admit

27. Please admit that Richard J. Zell owns 50% of the Illinois corporation "American Drapery Cleaners and Flameproofers, Inc."

**RESPONSE:** Admit

28. Please admit that in June 2001, Richard J. Zell of Draw Drape, Inc. received a Violation Notice letter from Illinois EPA.

**RESPONSE:** Admit

29. Please admit that said Violation Notice letter from Illinois EPA was numbered A 2001 00103.

**RESPONSE:** Respondent neither admits nor denies the allegations in ¶29 due to lack of knowledge.

30. Please admit that neither Richard J. Zell nor any other person representing Draw Drape, Inc. responded to the June 2001 Illinois EPA Violation Notice letter within 45 days of receipt of the Violation Notice letter.

**RESPONSE:** Denied

31. Please admit that for Dryer #1 Respondent has failed to limit VOM emissions to the atmosphere to an average of 3.5 kilograms of VOM per 100 kilograms dry weight articles cleaned.

**RESPONSE:** Denied

32. Please admit that for Dryer #2, Respondent failed to limit VOM emissions to the atmosphere to an average of 3.5 kilograms of VOM per 100 kilograms dry weight articles cleaned between the installation of Dryer #2 and the time at which dry cleaning operations ceased in 2001 or 2002.

**RESPONSE:** Denied

33. Please admit that for Dryer 3 Respondent has failed to reduce VOM content in all filtration wastes to 1.0 kilogram or less per 100 kilograms of articles dry cleaned, before disposal and exposure to the atmosphere.

**RESPONSE:** Denied

34. Please admit that for Dryer #2, between the installation of Dryer #2 in 1996 and the time that dry cleaning operations were stopped in 2001 or 2002, Respondent has failed to reduce VOM content in all filtration wastes to 1.0 kilogram or less per 100 kilograms of articles dry cleaned, before disposal and exposure to the atmosphere.

**RESPONSE:** Denied

35. Please admit that Respondent failed to visually inspect Dryer #1 in order to demonstrate compliance with the requirements of Section 218.607(b)(2) of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 218.607(b)(2).

**RESPONSE:** Denied

36. Please admit that Respondent failed to visually inspect Dryer #2 in order to demonstrate compliance with the requirements of Section 218.607(b)(2) of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 218.607(b)(2).

**RESPONSE:** Denied

37. Please admit that Respondent failed to follow the methods described in EPA-450/3-82-009 (1982) in order to demonstrate compliance with Sections 218.607(a)(2) and 218.607(b)(1) of the 218.607(a)(2) and (b) (1), for Dryer #1.

**RESPONSE:** Denied

38. Please admit that Respondent has failed to follow the methods described in EPA-450/3-82-009 (1982) in order to demonstrate compliance with Sections 218.607(a) (2) and 218.607(b) (1) of the board's Air Pollution Regulations, 35 Ill. Adm. Code 218.607(a) (2) and (b) (1), for Dryer #2.

**RESPONSE:** Denied

39. Please admit that Dryer #2 is a "new emission source" as that term is defined by Section 201.102 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.102, because it is capable of emitting VOM.

**RESPONSE:** Denied

40. Please admit that Respondent installed Dryer #2 at its facility without first obtaining a permit from the Illinois EPA.

**RESPONSE:** Admit

41. Please admit that since 1996, Respondent has operated and continues to operate Dryer #2 at its facility without a permit from the Illinois EPA.

**RESPONSE:** Admit

42. Please admit that Respondent was granted a FESOP to operate its emissions sources at its facility.

**RESPONSE:** Admit

43. Please admit that said FESOP was granted on January 13, 1998 and expired on January 13, 2003.

**RESPONSE:** Denied

44. Please admit that Respondent's FESOP No. 95100005, provided, in pertinent part, the following condition:

**RESPONSE:** Respondent neither admits nor denies the allegations in ¶44 as the FESOP speaks for itself.

45. Please admit that Respondent did not perform an initial test on Dryer #2 to verify that the flow rate of recovered solvent from Dryer #2 was no greater than .05 liters per minute.

**RESPONSE:** Admits but states there is no test available.

46. Please admit that Respondent did not perform said initial test for a duration of at least 2 weeks.

**RESPONSE:** Admits but states there is no test available.

47. Please admit that Respondent did not perform said initial test on Dryer #2 for at least 50 percent of the dryer loads during said 2 weeks and did not monitor those loads for their final recovered solvent flow rate.

**RESPONSE:** Admits but states there is no test available.

DRAW DRAPE CLEANERS, INC., an  
Illinois corporation

By: Michele Rocawich  
One of their attorneys

Ariel Weissberg, Esq.  
John H. Redfield, Esq.  
Michele Mary Rocawich, Esq.  
Weissberg and Associates, Ltd.  
401 S. LaSalle St., Suite 403  
Chicago, IL 60605  
312/663-0004  
FAX: 312/663-1514

CERTIFICATE OF SERVICE

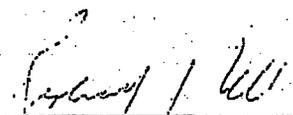
I, Michele Rocawich, certify that on April 30, 2003, we served this Draw Drape Cleaners Response to Request to Admit on the above-named counsels by regular mail.

Michele Rocawich  
Michele Rocawich

COUNTY OF COOK            )  
                                  )  
STATE OF ILLINOIS        )        SS

VERIFICATION

I, Richard Zell, being duly sworn, state I have read DRAW DRAPE CLEANERS' RESPONSE TO FIRST REQUEST TO ADMIT and all the statements in this Response are true and correct to the best of my knowledge and belief.

  
\_\_\_\_\_  
RICHARD ZELL

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, )  
 )  
Complainant, )  
 )  
v. ) No. PCB 03-51  
 ) (Enforcement - Air)  
DRAW DRAPE CLEANERS, INC., )  
an Illinois corporation, )  
 )  
Respondent. )

Exhibit C

COMPLAINANT'S FIRST REQUEST FOR ADMISSION OF FACTS  
ON RESPONDENT DRAW DRAPE CLEANERS, INC.

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, pursuant to Section 101.616 of the Illinois Pollution Control Board's Procedural Regulations and Illinois Supreme Court Rule 216, hereby serves the following First Request for Admission of Facts upon Respondent DRAW DRAPE CLEANERS, INC., to admit the truth of the following facts in writing within 28 days from the date of service hereof.

INSTRUCTIONS AND DEFINITIONS

1. With respect to any requested admission which Respondent refuses to answer because of a claim of privilege, provide a statement signed by an attorney representing Respondent setting forth as to each:

- a. the nature of the claim of privilege;
- b. the statute, rule or decision which is claimed to give rise to the claim of privilege;
- c. all facts relied upon in support of the claim of privilege;
- d. an identification of all documents related to the claim of privilege;
- e. an identification of all persons having knowledge of any facts related to the claim of privilege;

- and
- f. an identification of all events, transactions or occurrences related to the claim of privilege.

2. For all requested admissions which Respondent denies or which Respondent can neither admit nor deny, pursuant to Illinois Supreme Court Rule 216(c), Respondent is required to provide Plaintiff with a sworn statement denying specifically the matters of which admission is requested or setting forth in detail the reasons why Respondent cannot truthfully admit or deny those matters.

3. "Complaint" shall mean the Complaint for Civil Penalties filed in this case by Plaintiff on October 15, 2002.

4. "Plaintiff" shall mean the Plaintiff listed in the complaint and any of his agents, representatives, or persons who acted as Plaintiff's representative.

5. "Respondent" shall refer to Draw Drape Cleaners, Inc., and the agents, employees, representatives or any other person or persons acting for or in concert with Draw Drape Cleaners, Inc..

6. "Facility" shall mean the property located 2235-2239 West Roscoe Street, Chicago, Cook County, Illinois, 60618 as referenced in paragraph 4 Count I of the complaint.

7. "Act" shall mean the Illinois Environmental Protection Act, 415 ILCS 5/1 et. seq. (2002).

8. "Own" means have good legal title to, hold as property, possess.

9. "Operate" means use, exercise control over, or having responsibility for the daily operation of.

10. "Entity" means a corporation, an incorporated business, or a limited liability company.

11. "Current" or "Present" means the filing date of this First Request for Admissions of Facts.

12. "Illinois EPA" means the Illinois Environmental Protection Agency.

13. "Board" shall mean the Illinois Pollution Control Board.

14. "Person" shall include, but is not limited to, any natural person; business or corporation, whether for profit or not; firm, partnership, or other non-corporate business organization; charitable, religious, education, governmental, or other non-profit institution, foundation, body, or other organization; or employee, agent, or representative of any of the foregoing.

15. "Or" shall mean and/or wherever appropriate.

16. "FESOP" shall mean Federally Enforceable State Operating Permit.

17. "VOM" shall mean volatile organic material or volatile organic compound.

18. "Dryer #1" shall mean the Dryer installed at the facility prior to 1981 that is still in operation at the facility.

19. "Dryer #2" shall mean the Dryer installed at the facility in 1996.

20. All terms not specifically defined herein shall have their logical ordinary meaning, unless such terms are defined in the Act or the regulations promulgated thereunder, in which case the appropriate or regulatory definitions shall apply.

#### FACTS

##### Request No. 1

Please admit that at all times relevant to the Complaint, Respondent was and is an Illinois corporation duly organized and existing under the laws of the State of Illinois and is in good standing.

##### Response:

##### Request No. 2

Please admit that at all times relevant to the Complaint, Respondent has operated the facility.

##### Response:

Request No. 3

Please admit that Respondent operates a petroleum solvent dry cleaning operation at its facility to clean drapes.

Response:

Request No. 4

Please admit that Respondent installed Dryer #1 at the facility sometime prior to 1981 and continues to operate Dryer #1.

Response:

Request No. 5

Please admit that Dryer #1 emitted VOM into the air from the time that it was installed until the present.

Response:

Request No. 6

Please admit that Respondent installed Dryer #2 at the facility in 1996 and continues to operate Dryer #2.

Response:

Request No. 7

Please admit that Dryer #2 emitted VOM after it was installed until sometime in 2001 or 2002.

Response:

Request No. 8

Please admit that Dryer #2 was used to dry clean drapes from the time it was installed until sometime in 2001 or 2002.

Response:

Request No. 9

Please admit that Dryer #2 has only been used for "fluffing" drapes since sometime in 2001 or 2002.

Response:

Request No. 10

Please admit that Dryer #1 is a petroleum solvent dryer.

Response:

Request No. 11

Please admit that Dryer #2 is a petroleum solvent dryer.

Response:

Request No. 12

Please admit that Respondent uses naphtha as a solvent in its dry cleaning operations in Dryer #1.

Response:

Request No. 13

Please admit that Respondent used naphtha as a solvent in its dry cleaning operations in Dryer #2 at those times when it performed dry cleaning operations in Dryer #2.

Response:

Request No. 14

Please admit that vapors from Dryer #1 have never been recovered.

Response:

Request No. 15

Please admit that vapors from Dryer #2 have never been recovered.

Response:

Request No. 16

Please admit that Dryer #1 is not a solvent recovery dryer.

Response:

Request No. 17

Please admit that Dryer #2 is not a solvent recovery dryer.

Response:

Request No. 18

Please admit that Dryer #1 lacks a cartridge filter.

Response:

Request No. 19

Please admit that Dryer #2 lacks a cartridge filter.

Response:

Request No. 20

Please admit that an Illinois EPA inspector was at the facility on January 17, 2001.

Response:

Request No. 21

Please admit that an Illinois EPA inspector was at the facility on March 29, 2001.

Response:

Request No. 22

Please admit that the current registered agent for Draw Drape is Richard J. Zell.

Response:

Request No. 23

Please admit that the current president of Draw Drape is Steven M. Press.

Response:

Request No. 24

Please admit that Steven M. Press owns 50% of the Roscoe Street Partnership.

Response:

Request No. 25

Please admit that Richard J. Zell owns 50% of the Roscoe Street Partnership.

Response:

Request No. 26

Please admit that Steven M. Press owns 50% of the Illinois corporation "American Drapery Cleaners and Flameproofers, Inc."

Response:

Request No. 27

Please admit that Richard J. Zell owns 50% of the Illinois corporation "American Drapery Cleaners and Flameproofers, Inc."

Response:

Request No. 28

Please admit that in June 2001, Richard J. Zell of Draw Drape, Inc. received a Violation Notice letter from Illinois EPA

Response:

Request No. 29

Please admit that said Violation Notice letter from Illinois EPA was numbered A 2001 00103.

Response:

Request No. 30

Please admit that neither Richard J. Zell nor any other person representing Draw Drape, Inc. responded to the June 2001 Illinois EPA Violation Notice letter within 45 days of receipt of the Violation Notice letter.

Response:

Request No. 31

Please admit that for Dryer #1 Respondent has failed to limit VOM emissions to the atmosphere to an average of 3.5 kilograms of VOM per 100 kilograms dry weight articles cleaned.

Response:

Request No. 32

Please admit that for Dryer #2, Respondent failed to limit VOM emissions to the atmosphere to an average of 3.5 kilograms of VOM per 100 kilograms dry weight articles cleaned between the installation of Dryer #2 and the time at which dry cleaning operations ceased in 2001 or 2002.

Response:

Request No. 33

Please admit that for Dryer #1 Respondent has failed to reduce VOM content in all filtration wastes to 1.0 kilogram or less per 100 kilograms of articles dry cleaned, before disposal and exposure to the atmosphere.

Response:

Request No. 34

Please admit that for Dryer #2, between the installation of Dryer #2 in 1996 and the time that dry cleaning operations were stopped in 2001 or 2002, Respondent has failed to reduce VOM content in all filtration wastes to 1.0 kilogram or less per 100 kilograms of articles dry cleaned, before disposal and exposure to the atmosphere.

Response:

Request No. 35

Please admit that Respondent failed to visually inspect Dryer #1 in order to demonstrate compliance with the requirements of Section 218.607(b)(2) of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 218.607(b)(2).

Response:

Request No. 36

Please admit that Respondent failed to visually inspect Dryer #2 in order to demonstrate compliance with the requirements of Section 218.607(b)(2) of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 218.607(b)(2).

Response:

Request No. 37

Please admit that Respondent failed to follow the methods described in EPA-450/3-82-009 (1982) in order to demonstrate compliance with Sections 218.607(a)(2) and 218.607(b)(1) of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 218.607(a)(2) and (b)(1), for Dryer #1.

Response:

Request No. 38

Please admit that Respondent has failed to follow the methods described in EPA-450/3-82-009 (1982) in order to demonstrate compliance with Sections 218.607(a)(2) and 218.607(b)(1) of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 218.607(a)(2) and (b)(1), for Dryer #2.

Response:

Request No. 39

Please admit that Dryer #2 is a "new emission source" as that term is defined by Section 201.102 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.102, because it is capable of emitting VOM.

Response:

Request No. 40

Please admit that Respondent installed Dryer #2 at its facility without first obtaining a permit from the Illinois EPA.

Response:

Request No. 41

Please admit that since 1996, Respondent has operated and

continues to operate Dryer #2 at its facility without a permit from the Illinois EPA.

Response:

Request No. 42

Please admit that Respondent was granted a FESOP to operate its emissions sources at its facility.

Response:

Request No. 43

Please admit that said FESOP was granted on January 13, 1998 and expired on January 13, 2003.

Response:

Request No. 44

Please admit that Respondent's FESOP No. 95100005, provided, in pertinent part, the following condition:

5. The Permittee shall comply with the standards, operating practices, inspections and repair of leaks, and the testing and monitoring requirements for petroleum solvent dry cleaners as specified in 35 Ill. Adm. Code 218.607 through 218.610.

Response:

Request No. 45

Please admit that Respondent did not perform an initial test on Dryer #2 to verify that the flow rate of recovered solvent from Dryer #2 was no greater than .05 liters per minute.

Response:

Request No. 46

Please admit that Respondent did not perform said initial test for a duration of at least 2 weeks.

Response:

Request No. 47

Please admit that Respondent did not perform said initial test on Dryer #2 for at least 50 percent of the dryer loads during said 2 weeks and did not monitor those loads for their final recovered solvent flow rate.

Response:

Respectfully submitted,

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

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

ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

By:

\_\_\_\_\_  
JOEL J. STERNSTEIN  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St. 20th Fl.  
Chicago, Illinois 60601  
(312) 814-6986

CERTIFICATE OF SERVICE

I, JOEL J. STERNSTEIN, an Assistant Attorney General, certify that on the 11th day of April, 2003, I caused to be served by First Class Mail the foregoing COMPLAINANT'S FIRST REQUEST FOR ADMISSION OF FACTS ON RESPONDENT DRAW DRAPE CLEANERS, INC. to the parties named on the attached service list, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.



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JOEL J. STERNSTEIN

SERVICE LIST

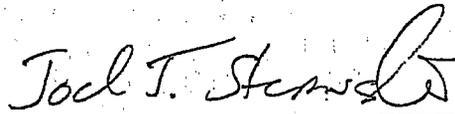
Ms. Maureen Wozniak, Esq.  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62702

Ms. Michele Rocawich, Esq.  
Weissberg and Associates, Ltd.  
401 S. LaSalle Street, Suite 403  
Chicago, Illinois 60605



CERTIFICATE OF SERVICE

I, JOEL J. STERNSTEIN, an Assistant Attorney General, do certify that I caused to be mailed this 27<sup>th</sup> day of June, 2003, the foregoing Plaintiff's Motion for Partial Summary Judgment by first-class mail in a postage prepaid envelope and depositing same with the United States Postal Service located in Chicago, Illinois.

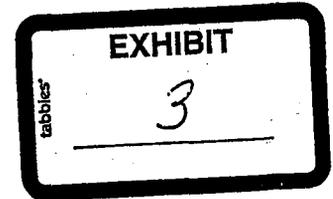


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JOEL J. STERNSTEIN

ILLINOIS POLLUTION CONTROL BOARD

August 21, 2003



PEOPLE OF THE STATE OF ILLINOIS )  
)  
Complainant, )  
)  
v. )  
)  
DRAW DRAPE CLEANERS, INC., )  
)  
Respondent. )

PCB 03-51  
(Enforcement – Air)

ORDER OF THE BOARD (by M.E. Tristano):

This matter is before the Board on a motion for partial summary judgment filed by the People of the State of Illinois (People) on June 27, 2003, against Draw Drape Cleaners, Inc., (respondent). The People seek partial summary judgment on four of eight counts in its 2002 complaint alleging air pollution, operating and permit violations of the Environmental Protection Act (Act) and the Board's air rules. Respondent runs a dry cleaning facility in Chicago, Cook County.

On July 18, 2003, respondent filed a response in opposition to the motion, asserting that various mitigating circumstances dictate a finding in its favor. On July 31, 2003, the People filed a reply, accompanied by a motion for leave to file, which is granted by the Board.

The People seek summary judgment against respondent on four of the eight counts: count IV, construction of an emissions source without a permit; count V, operation of an emissions source without a permit; count VII, installation of a non-solvent recovery dryer and lack of a cartridge filter; and count VIII, failure to perform an initial flow rate test.

For the reasons outlined below, the Board grants the People partial summary judgment on the complaint by finding that respondents violated the Act and Board's rules as outlined in counts IV, V, VII, and count VIII. The parties are directed to proceed expeditiously to a hearing on remedy and penalty for these counts, and on all issues for the remainder of the contested counts in the complaint. Respondents are free to present any mitigating evidence or arguments as they may relate to the Board's consideration of the factors contained in Section 33(c) and 42(h) of the Act at hearing.

**PROCEDURAL HISTORY**

On October 15, 2002, the People filed an eight-count complaint against respondent. The complainant alleged that respondent violated various provisions of the Act, the Board's air pollution regulations, and its Federally Enforceable State Operating Permit (FESOP). The complaint involves a petroleum solvent dry cleaning facility operated by respondent at 2235-2239 West Roscoe Street, Chicago, Cook County.

On December 17, 2002, the respondent filed an answer to the complaint and offered five affirmative defenses. On January 16, 2003, the complainant filed a motion to strike or dismiss respondent's affirmative defenses. On February 20, 2003, the Board granted the complainant's motion to strike respondent's affirmative defenses for the reasons outlined in that order. People v. Draw Drape Cleaners, Inc., PCB 03-51 (Feb. 20, 2003).

On April 11, 2003, the People served respondent with written discovery, including a request for admission of facts. Respondent subsequently served the People with responses to written discovery including its response to the request to admit. (the People filed the responses as Exhibit B to its motion for summary judgment.) In the responses to the request to admit, respondent admitted that it failed to secure the required construction and operating permits for dryer #2. Respondent admitted that dryer #2 is not a solvent recovery dryer and lacks a cartridge filter. Finally, respondent admitted that it failed to perform an initial flow rate test on dryer #2.

### **STANDARD OF DECISION**

Summary judgment is appropriate when the pleadings, depositions, admissions on file, and affidavits disclose that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Dowd & Dowd, Ltd. v. Gleason, 181 Ill. 2d 460, 483, 693 N.E. 2d 358, 370 (1998). In ruling on a motion for summary judgment, the Board "must consider the pleadings, depositions, and affidavits strictly against the movant and in favor of the opposing part." *Id.*

Summary judgment "is a drastic means of disposing of litigation," and therefore it should be granted only when the movant's right to the relief is clear and free from doubt." *Id.*, citing Purtill v. Hess, 111 Ill. 2d 199, 240, 489 N.E.2d 867, 871 (1986). However, a party opposing a motion for summary judgment may not rest on its pleadings, but must "present a factual basis which would arguably entitle [it] to a judgment." Gauthier v. Westfall, 266 Ill. App. 3d 213, 219, 639 N.E.2d 994, 999 (2d Dist. 1994).

### **Count IV: Construction Without Permit**

Count IV of the complaint alleges that respondent constructed an emissions source without a permit in violation of Section 9(b) of the Act and Section 201.142 of the Board's air pollution regulations.

Section 9(b) of the Act provides as follows:

No person shall:

- (b) Construct, install, or operate any equipment, facility, vehicle, vessel, or aircraft capable or contributing to air pollution or designed to prevent air pollution, of any type designated by Board regulations, without a permit granted by the Agency, or in violation of any conditions imposed by such permit.

Section 201.142 of the Board's Air Pollution Regulations provides as follows:

No person shall cause or allow the construction of any new emission source or any new air pollution control equipment, or cause or allow the modification of any existing emission source or air pollution control equipment, without first obtaining a construction permit from the Agency, except as provided in Section 201.146.

The People argue that respondent admitted it installed dryer #2 at its facility without first obtaining a permit from the Agency. Mot. Ex. Resp. at 40. Thus, complainant argues that respondent violated Section 9(b) of the Act and Section 201.142 of the Board's Air Pollution Regulations and summary judgment should be awarded to complainant.

In response, Draw Drapes argues that it installed dryer #1 in the 1960s and operated it in compliance with the Act until it was damaged in 1994. Draw Drapes asserts that the Act "grandfathered in" dryer #1, so that it did not need a permit. Due to a fire at the plant and forced to rebuild its plant, respondent obtained a permit to rebuild. To resume operations, respondent argues it needed a dryer with at least a 100 lb capacity to replace dryer #1. The respondent contends that in 1996 when the plant was rebuilt, a recovery dryer was not available. As a result, respondent purchased and installed dryer #2. Because the dryers were identical and dryer #1 was destroyed in the fire and it had obtained a permit to rebuild, respondent argues it 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 asserts it ordered and installed the recovery dryer. Resp. at 1, 3.

In its reply, the People contend that respondent cannot hide behind its assertion that it believed dryer #2 was constructed in compliance with the Act. The People argue that "a defendant is presumed to know the law and that ignorance of the law is no excuse." People v. Acosta, 331 Ill. App.3d I, 6; 768 N.E. 2d 746, 751 (2d Dist. 2001); People v. Terneus, 239 Ill. App.3d 669, 672; 607 N.E.2d 568, 570 (4th Dist. 1992).

The Board grants summary judgment to complainant on count IV of the complaint. Respondent admits that it failed to secure the required construction permit for dryer #2 at its facility. Respondent thereby violated Section 9(b) of the Act and Section 210.142 of the Board's air pollution regulations. Respondent's arguments about good faith or mistaken understanding are not an appropriate defense to liability. But respondent is free to raise them at hearing as to remedy and penalty issues, as they may relate to the Board's consideration of factors of 33(c) or 42(h) of the Act.

#### Count V: Operation Without Permit

Count V of the complaint alleges that respondent operated an emissions source without a permit in violation of Section 9(b) of the Act and Section 201.143 of the Board's Air Pollution Regulations.

Section 201.143 of the Board's Air Pollution Regulations provides:

No person shall cause or allow the operation of any new emission source or new air pollution control equipment of a type for which a construction permit is required by Section 201.142 without first obtaining an operating permit from the Agency, except for such testing operations as may be authorized by the construction permit.

The People argue that respondent admitted it operated dryer #2 without first obtaining a permit from the Agency. Mot.at 7,Ex.B Resp. 41. Thus, the People argues that respondent violated Section 9(b) of the Act and Section 201.143 of the Board's Air Pollution Regulations and summary judgment should be awarded. *Id.*

Respondent argues that from the time it installed and began operating dryer #2, it operated it mainly to fluff draperies. Draw Drape contends that the process of fluffing does not emit VOMs into the environment. Respondent argues that during the time it operated dryer #2, it has emitted minimal VOMs into the environment. In support of this claim, Draw Drape cites to a verification that Richard Zell of Draw Drapes provided with respondent's answers to the complaint attesting to these facts:

1) Respondent has had a Federally Enforceable State Operating Permit (FESOP) since a permit was required; 2) Respondent has always operated its plant below the emissions allowed under its FESOP permit; and 3) Respondent would have to emit an additional 1,000 gallons per year to reach the emissions allowed under its FESOP. Resp. at 3.

Draw Drape argues that Mr. Zell's statements constitute evidentiary facts and that complainant has no proved evidentiary facts to controvert them. Respondent further argues that unsworn and unverified statements cannot be considered on a motion for summary judgment. Rotzoll v. Overheard 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, 699 N.E.2d 645 (1st Dist. 1996). As such, the respondent argues that the Board cannot consider the unsworn and unverified statements of complainant's counsel contained in its motion for summary judgment. Resp. at 3-4.

In its reply, the People again contend that respondent cannot hide behind its assertion that it believed dryer #2 was operating in compliance with the Act. The People state that "a defendant is presumed to know the law and that ignorance of the law is no excuse." People v. Acosta, 331 Ill. App.3d I, 6; 768 N.E. 2d 746, 751 (2d Dist. 2001); People v. Terneus, 239 Ill. App.3d 669, 672 N.E.2d 568, 570 (4th Dist. 1992). Reply at 3.

Also, the People contend that its motion did not contain unsworn and unverified statements, since it cited to respondent's sworn answers to interrogatories. The People assert that Supreme Court Rule 213(h) states "answers to interrogatories may be used in evidence to the same extent as a discovery deposition." Reply at 2. A discovery deposition, according to

Supreme Court Rule 212(a)(4) may be used "for any purpose for which an affidavit may be used." The People, therefore, argue that an answer to an interrogatory may be treated as an affidavit for purposes of a motion for summary judgment. Komater v. Kenton Court Ass. 151 Ill. App. 3d 632, 637; 1502 N.E. 2d 1295, 1298 (2d Dist. 1986). Reply at 2.

The Board finds that the complainant has proven that it is entitled to summary judgment on Count V. Mr. Zell himself has verified the facts on which the People rely as proof of violation: Draw Drape's response to the first request to admit facts. Mot. Ex. B at p. 12. Again, Draw Drape is free to introduce evidence and arguments at hearing in mitigation of the violation as allowed by Sections 33 (c) and 42(h) of the Act.

**Count VII: Failure to Install Compliant Dryer**

Count VII of the complaint alleges that respondent did not install a solvent recovery dryer with a cartridge filter as required by Section 60.622 of Title 40 of the Code of Federal Regulations and Section 9.1(d) of the Act.

Section 60.622 of Title 40 of the Code of Federal Regulations provides:

- (a) Each affected petroleum solvent dry cleaning dryer that is installed at a petroleum dry cleaning plant after December 14, 1982, shall be a solvent recovery dryer. The solvent recovery dryer(s) shall be properly installed, operated and maintained.
- (b) Each affected petroleum solvent filter that is installed at a petroleum dry cleaning plant after December 14, 1982, shall be a cartridge filter. Cartridge filters shall be drained in their sealed housings for at least 8 hours prior to their removal.

Section 9.1(d) of the Act provides:

No person shall:

- (1) violate any provisions of Sections 111, 112, 165 or 173 of the Clean Air Act, as now or hereafter amended, or federal regulations adopted pursuant thereto; or
- (2) construct, install, modify or operate an equipment, building, facility, source or installation which is subject to regulation under Sections 111, 112, 165 or 173 of the Clean Air Act, as now or hereafter amended, except in compliance with the requirements of such Sections and federal regulations adopted pursuant thereto, and no such action shall be undertaken without a permit granted by the Agency or in violation of any conditions imposed by such permit.

The People argue that respondent admitted that dryer #2 is not a solvent recovery dryer and that it lacks a cartridge filter as admitted in Exhibit B – Response No. 17, 19 (Mot. at 7-8, Ex. B Resp. 17 and 19). The People conclude that respondent violated Section 60.622 of Title 40 of the Code of Federal Regulations and Section 9.1(d) of the Act and that summary judgment should be awarded.

Draw Drape argues that a recovery dryer with a cartridge filter of the proper size to replace the dryer destroyed by the fire was not available in 1996. When a recovery dryer in the proper size became available in May 2002, respondent states it immediately ordered a new recovery dryer. Respondent asserts the manufacturer accepted respondent's order for the new recovery dryer in May 2002 and delivered the new dryer in late September 2002. Draw Drape relates that it obtained a permit and installed and began operation of the new dryer in May 2003. Resp. at 4.

In its reply, the People contend that the unavailability of a proper sized dryer does not excuse respondent from complying with the law. Comp. Resp. at 3.

The Board grants summary judgment to the People on Count VII of the complaint. Respondent admitted that it dryer #2 is not a solvent recovery dryer and lacks a cartridge filter. Respondent thereby violated Section 60.622 of Title 40 of the Code of Federal Regulations and Section 9.1(d) of the Act. Respondent may offer evidence and argument relevant to Sections 33(c) and 42(h) of the Act about equipment availability at hearing.

#### **Count VIII: Failure to Perform Initial Emissions Test**

Count VIII of the complaint alleges that respondent did not perform the initial test required by Section 60.624 of Title 40 of the Code of Federal Regulations and Section 9.1(d) of the Act. Section 60.624 provides:

Each owner or operator of an affected facility subject to provisions of Section 60.622(a) shall perform an initial test to verify that the flow rate of recovered solvent from the solvent recovery dryer at the termination of the recovery cycle is no greater than 0.05 liters per minute. This test shall be conducted for a duration of no less than 2 weeks during which no less than 50 percent of the dryer loads shall be monitored for their final recovered solvent flow rate.

The People argue that respondent admitted it did not initially test dryer #2 to verify the flow rate of recovered solvent after dryer #2 was installed in 1996. Mot. at 9-11; Ex. B Resp. 45, 46, and 47. Thus, the People conclude that the respondent violated Section 60.624 of Title 40 of the Code of Federal Regulations and Section 9.1(d) of the Act and summary judgment should be awarded.

Draw Drape notes it did not perform an emissions test when it began operating the new dryer because no commercial emissions test was available at the time. In addition, respondent contends it has had a FESOP since a permit was required and that it has always operated its plant

below the emissions allowed under its FESOP permit. Respondent estimates that it would have to emit additional 1,000 gallons per year to reach the emissions allowed under its FESOP to be in violation. Respondent argues that it verified this fact and complainant did not controvert this properly supported material fact. Resp. at 4.

In the reply, the People contend that respondent could have performed the test outlined in Section 60.624 with a graduated cylinder, a stopwatch, pen and paper, knowledge of simple arithmetic, and time to measure every other dryer load for two weeks. Respondent's possession of a FESOP, the People state, does not excuse failure to perform the test. The People argue that respondent failed to perform the test by its own admission and thereby violated the Act and the Code of Federal Regulation. Reply at 4.

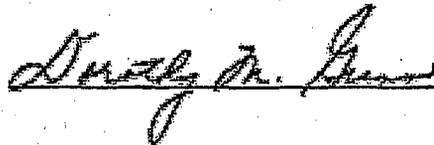
The Board grants summary judgment to the People on count VIII of the complaint. Respondent admitted that it did not initially test dryer #2 to verify the flow rate of recovered solvent after the dryer was installed in 1996. Respondent's argument that it could not perform the test because no commercial emissions test was available at the time does not bar a finding of liability. As the People contend, respondent could have tested in other ways. Respondent violated Section 60.624 of Title 40 of the Code of Federal Regulations and Section 9.1(d) of the Act. Respondent may make any appropriate arguments under Sections 33(c) and 42(h) during the next phase of this proceeding.

### CONCLUSION

The Board grants the People's motion for partial summary judgment on the complaint by finding that respondents violated the Act and Board's rules as outlined in counts IV, V, VII, and count VIII. The parties are directed to proceed expeditiously to hearing on the remainder of the contested counts of the complaint, as well as on remedy and penalty issues.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 21, 2003, by a vote of 7-0.

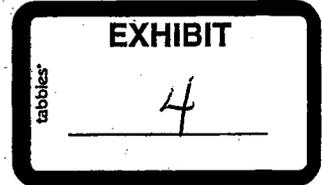


Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS )  
 )  
 Complainant, )  
 )  
 DRAW DRAPE CLEANERS, INC., )  
 an Illinois corporation, )  
 )  
 Respondent.. )

No. PCB 03-51  
(Enforcement - Air)



**DRAW DRAPES RESPONSE  
TO  
FIRST OF SET OF INTERROGATORIES**

To: Ms. Maureen Wozniak, Esq.  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Springfield, Illinois 62702  
Telephone: (217)-782-5544  
Fax: (217) 782-9807

Joel J. Sternstein  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St.  
20<sup>th</sup> Floor  
Chicago, Illinois 60601  
Telephone: (312)-814-6986  
Fax: (312) 814-2347

Respondent Draw Drape Cleaners, Inc. (collectively "Respondent"), by their attorneys, Weissberg and Associates, Ltd., respond to Complainant's First Request for Production of Documents, Objects and Tangible Things on Respondent Draw Drape Cleaners, Inc. ("Production Request"), and states:

1. Please Identify:
  - (a) The individual(s) answering these interrogatories on behalf of Respondent, including his or her relationship to Respondent, and how long he or she has been associated with Respondent.

**ANSWER:**

Richard Zell, Vice President Draw Drapes  
2239 West Roscoe  
Chicago, IL 60618

- (b) Each person who provided information or who otherwise consulted, participated or assisted in connection with providing answers to these interrogatories, the nature of any such consultation or assistance, whether the information was based on personal knowledge, and if not on the basis of personal knowledge, on what basis it was provided.

**ANSWER:**

Michele Rocawich, Esq.  
Weissberg & Associates, Ltd.  
401 S. LaSalle Street, Suite, 402  
Chicago, IL 60-605  
One of the Attorneys for Draw Drapes

- (c) For each person identified in Answer to Interrogatories No. 1(b), specify the particular interrogatories to which each such person contributed.

**ANSWER:** All interrogatories

2. Identify the name, address, phone number, occupation, and responsibilities of any and all persons having knowledge of the operations at the facility and/or the facts pertaining to any possible release of VOM or other pollutants and any of the facts alleged in the Complaint filed in People v. Draw Drape Cleaners, Inc., PCB 03-51. Include any and all persons that Respondent intends to call as witnesses at hearing, including their relationship, if any, to Respondent.

**ANSWER:**

Richard Zell, Vice President Draw Drapes  
2239 West Roscoe  
Chicago, IL 60618

Uyless Thomas  
Employee, Draw Drapes  
826 East 53<sup>rd</sup> Street  
Chicago, IL 60615

3. Pursuant to Illinois Supreme Court Rule 213(f), with respect to any hearing witnesses, please state the following:

(a) The name, address and employer of each witness.

**ANSWER:** To be determined

(b) A summary of the relevant facts within the knowledge of or which said witness will testify to.

**ANSWER:** To be determined

(c) A listing of any documents or photographs which any such witness has relied upon, will use or which may introduce into evidence in connection with the testimony of said witness.

**ANSWER:** To be determined

4. Furnish the identity and addresses of independent expert witnesses who will testify at trial for Respondent, together with the subject matter on which each independent expert witness is expected to testify; the conclusions and opinions of each independent expert witness and the bases therefore; and the qualifications of each independent expert witness and a copy of all reports of such witnesses.

**ANSWER:** To be determined

5. Furnish the identity and addresses of controlled expert witnesses who also will testify for plaintiffs, together with the subject matter on which each controlled expert witness is expected to testify; the conclusions and opinions of each controlled expert witness and the bases therefore; and the qualifications of each controlled expert witness and a copy of all reports of such witnesses.

**ANSWER:** To be determined

6. With respect to any witness(es) interviewed by Respondent who Respondent does not intend to call to testify at hearing, state the name and address of any such witness, state whether a transcript of any interview with said witness was prepared, or a memorandum prepared in connection with any such interview, and provide a summary of the facts and opinions relevant to this proceeding which were secured from said witness.

**ANSWER:** To be determined --- Discovery Continues

7. Pursuant to Illinois Supreme Court Rule 213(g), identify any and all opinion witnesses that Respondent has interviewed and/or expects to call at hearing. Specify:

1. The subject matter on which the opinion witness is expected to testify as well as the conclusions, opinion and/or expected testimony of any such witness;
2. The qualifications, including but not limited to the opinion witness' educational background, practical experience in the area he or she is expected to testify in, any articles and papers he or she has written, any and all seminars and post graduate training he has received, his experience, if any, as a teacher or lecturer and his or her professional appointments and associations.
3. The identify of each document examined, considered, or relied upon by him or her to form his or her opinions.
4. All proceedings in which each opinion witness has previously testified as an opinion witness.
5. Any and all reports of the opinion witness.

**ANSWER:** To be determined

8. Describe the relationship and business dealings between the Illinois corporation of American Drapery Cleaners and Flameproofers, Inc. and Draw Drape Cleaners, Inc.

**ANSWER:** Draw Drapes was the original owner under which the original FESOP was issued; American Drapery Cleaners and Flameproofers, Inc. was formed to do

business with Sears Roebuck & Co., Carson Pirie Scott & Co., Marshall Fields. American Drapery Cleaners and Flameproofers, Inc. and Draw Drapes are owned by the same parties and use the same facilities.

9. Describe the relationship and business dealings between the Roscoe Street Partnership and Draw Drape Cleaners, Inc.

**ANSWER:** Roscoe Street Partnership owns the Property where Draw Drape's operates.

10. Describe the relationship between the Illinois corporation of American Drapery Cleaners and Flameproofers, Inc., Draw Drape Cleaners Inc., the Roscoe Street Partnership, Draw Drape Cleaners Inc., and the bankruptcy of Lake Shore Mazda.

**ANSWER:** Lake Shore Mazda is the business owned by Steven Press & Richard Zell. Steven Press, Audrey Press and Richard Zell own the Roscoe Street Partnership. American Drapery Cleaners and Flameproofers, Inc. and Draw Drape Cleaners, Inc., are owned by Steven Press and Richard Zell. American Drapery Cleaners is listed as a creditor of Lake Shore Mazda.

11. Provide the number of kilograms of VOM that Respondent emitted to the atmosphere per 100 kg dry weight of articles cleaned.

a) From Dryer #1 for each year that Dryer #1 was/is in operation.

**ANSWER:** No record exists. The kilograms of VOM emitted varies with different types of drapes.

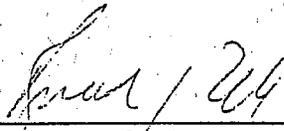
b) From Dryer #2 for each year that Dryer #2 was/is in operation.

**ANSWER:** No record exists. The kilograms of VOM emitted varies with different types of drapes.

COUNTY OF COOK            )  
                                  )  
STATE OF ILLINOIS        )        SS

**VERIFICATION**

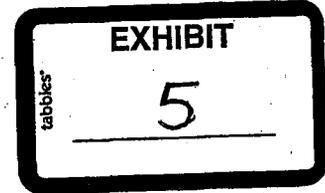
I, Richard Zell, being duly sworn, state I have read DRAW DRAPES CLEANERS' RESPONSE TO FIRST SET OF INTERROGATORIES and the statements in this Response are true and correct to the best of my knowledge and belief.

  
\_\_\_\_\_  
RICHARD ZELL

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS )  
 )  
 Complainant, )  
 )  
 DRAW DRAPE CLEANERS, INC., )  
 an Illinois corporation, )  
 )  
 Respondent. )

No. PCB 03-51  
(Enforcement - Air)



**RESPONSE TO STATE OF ILLINOIS' SECOND SET OF INTERROGATORIES**

Respondent Draw Drape Cleaners, Inc. ("Draw Drapes"), by its attorneys, Weissberg and Associates, Ltd., respond to Complainant's Second Set of Interrogatories on Respondent Draw Drape Cleaners, Inc., and state:

**INTERROGATORIES**

**Interrogatory No.1:**

Please provide a detailed list of all duties for the following persons with respect to the ownership and operation of Draw Drape Cleaners, Inc. and American Drapery Cleaners & Flameproofers, Inc. at all times relevant to the Complaint in this matter. Such duties include but are not limited to: the installation of Dryer #1 and Dryer #21 the operation of Dryer #1 and Dryer #2 and the testing of Dryer #1 and Dryer #2.

a. Richard Zell

**ANSWER:** Richard Zell operates and manages both companies and is and was responsible for day-to day operations

b. Steven Press

**ANSWER:** Steven Press has not been involved with either company for over 20 years. In addition, Respondent states that Richard Zell and Steven Press are involved in litigation against each other and Steven Press is represented by Gregory Stern Esq. 53 West Jackson, Suite 1442, Chicago, Illinois 60604, Tele. 312/444-9300.

c. Audrey Press

**ANSWER:** Audrey Press has never had anything to do with either company.

**Interrogatory No.2:**

List all owners/ operators / managers / employees and/or consultants for Draw Drape Cleaners Inc. and American Drapery Cleaners & Flameproofers, Inc. who had dealings with or conferred with or corresponded or met with government regulators (including, but not limited to the Attorney General's Office, Illinois EPAI the City of Chicago, and the U.S. Environmental Protection Agency) in all matters related to the Complaint including the application for a FE SOP for Draw Drape Cleaners.

**ANSWER:** Richard Zell is the only person who had dealings with or conferred with or corresponded or met with government regulators (including, but not limited to the Attorney General's Office, Illinois EPAI the City of Chicago, and the U.S. Environmental Protection Agency) in all matters related to the Complaint including the application for a FE SOP for Draw Drape Cleaners.

**Interrogatory No.3:**

For the owners, operators, managers, employees and/or consultants named in Interrogatory No.2, provide a detailed listing of the activities and duties that each of those persons performed in their dealings with or conferring with or corresponding with or meetings with government regulators.

**ANSWER:** Richard Zell was and is responsible for operating and managing the business.

**Interrogatory No.4:**

Identify all of the corporate officers of Draw Drape Cleaners, Inc. and American Drapery Cleaners & Flameproofers, Inc. from 1996 to the present, including the officers full legal names, position(s)and/or title(s) on the corporations' Board, per cent ownership in the corporation, social security numbers, and current or last known addresses.

**ANSWER:**

Richard Zell: 50% ownership -- Draw Drapes

50% ownership – American Drapes

Steven Press: 50% ownership – Draw Drapes

50% ownership – American Drapes

**Interrogatory No.5:**

Has Draw Drape Cleaners, Inc., American Drapery Cleaners & Flameproofers, Inc., Richard Zell, Steven Press, or Audrey filed for bankruptcy since 1996? If so, provide the Court bankruptcy was filed, the case number, and the amount of liability discharged.

**ANSWER:** No.

**DRAW DRAPE CLEANERS, INC.,**  
an Illinois corporation

By: Michele Mary Rocawich  
One of their attorneys

Ariel Weissberg, Esq.  
John H. Redfield, Esq.  
Michele Mary Rocawich, Esq.  
Weissberg and Associates, Ltd.  
401 S. LaSalle St., Suite 403  
Chicago, IL 60605  
312/663-0004

CERTIFICATE OF SERVICE

I, JOEL J. STERNSTEIN, an Assistant Attorney General, do certify that I caused to be mailed this 2<sup>nd</sup> day of July, 2004, the foregoing Plaintiff's Second Motion for Partial Summary Judgment by first-class mail in a postage prepaid envelope and depositing same with the United States Postal Service located in Chicago, Illinois.



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JOEL J. STERNSTEIN