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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD **AUG - 2 2004**

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS

Complainant,

v.

DRAW DRAPE CLEANERS, INC., an
Illinois corporation,

Respondent.

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

NOTICE OF FILING

To: Joel J. Sternstein, Esq.
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On August 2, 2004, we filed with the Clerk of the Illinois Pollution Control Board, James R. Thompson Center, 100 W. Randolph, Suite 11-500, Chicago, Illinois 60601, **AMERICAN DRAPERY CLEANERS & FALMEPROOFERS & RICHARD ZELL'S RESPONSE TO SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT**, a copy of which is served on you.

CERTIFICATE OF SERVICE

I, Michele Rocawich, certify that on August 2, 2004, Respondents' Response to Second Motion for Partial Summary Judgment was served on: Bradley P. Halloran by hand delivery; and Joel J. Sternstein and Maureen Wozniak by facsimile and first class mail.

A handwritten signature in cursive script, appearing to read "Michele Rocawich", is written above a horizontal line.

Michele Rocawich

**AMERICAN DRAPERY CLEANERS &
FLAMEPROOFERS and RICHARD ZELL,
Respondents,**

By: Michele Rocawich
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD,

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

After the fire in 1994, Respondents obtained a permit to rebuild their plant. Dryer #1 which were damaged in the fire were a 110 lb. dryer and Respondents needed a dryer of that size for their operations. When the plant were rebuilt, there were no recovery dryer available large enough for the size of Respondents operations and Respondents needed a dryer the size of Dryer #1 to continue their operations. Therefore, Respondents installed Dryer #2 on an interim basis until it could purchase a recovery dryer in the proper size. Respondents believed that because Dryer #2 was identical to Dryer #1 which destroyed in the fire, it could operate Dryer #2 without violating the Act.

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

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

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

ARGUMENT

Complainant's motion asks the Illinois Pollution Control Board ("Board") to find that American Drapery Cleaners & Flameproofers, Inc. and Richard Zell "are as liable as [Respondent] Draw Drape for the violations of the Environmental Protection Act ('Act') and summary judgment should be granted on the following counts of the complaint: 1) Count IV --- alleging that Respondents constructed an emissions source without a permit in violation of the Act; 2) Count V --- alleging that Respondents operated an emissions source without a permit in violation of the Act; 3) Count VII --- alleging that Respondents did not install a solvent recovery dryer with a cartridge filter in violation of the Act; and 4) Count VIII --- alleging Respondents did not perform the initial emissions test as required by the Act.

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

As to Count V which alleges that Respondents operated an emissions source without a permit, from the time Respondents installed and began operating Dryer #2, they operated it mainly to "fluff" draperies. The process of "fluffing" does not emit VOMs into the environment. During the period Respondents operated Dryer #2, the Dryer has emitted minimal VOMs into the environment. Richard Zell provided a verification with Respondents answers to complaint

attesting to these facts. (copy is attached to Response to Motion to Partial Summary Judgment as Exhibit 1). Mr. Zell avers that: 1) Respondents have had a Federally Enforceable State Operating Permit (FESOP) since a permit were required; 2) Respondents have always operated their plant below the emissions allowed under their FESOP Permit #95100005; and 3) Respondents would have to emit an additional 1,000 gallons per year to reach the emissions allowed under their FESOP.

Mr. Zell's verification constitutes "evidentiary facts" and Complainant has provided no evidentiary facts such as an affidavit to controvert the evidentiary facts submitted by Respondents. Unsworn and unverified statements cannot be considered on a motion for summary judgment. *Rotzoll v. Overhead Door Corp.*, 289 Ill.App.3d 410, 161-62, 681 N.E.2d 156 (4th Dist. 1997); *West v. Deere & Co.*, 201 Ill.App.3d 891, 900, 559 N.E.2d 511 (2nd Dist. 1990). Unsubstantiated hearsay statements cannot be considered in ruling on a motion for summary judgment. *Laja v. AT & T*, 283 Ill.App.3d 126, 136, 669 N.E.2d 645 (1st Dist. 1996)(citing *Seefelt v. Milliken National Bank of Decatur*, 154 Ill. Spp.3d 715, 506 N.E.2d 1052 (1987)). As such, the Board cannot consider the unsworn and unverified statements of Complainant's Counsel contained in their motion for partial summary judgment.

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

As to Count VIII which alleges Respondents did not perform an initial emissions test, Respondents did not perform an emissions test when Respondents began operating Dryer #2 as a replacement for Dryer #1 which was destroyed in the 1994 fire because no commercial emissions test was available at that time. Moreover, Respondents have had a Federally

Enforceable State Operating Permit (FESOP) since a permit was required, and Respondents have always operated their plant below the emissions allowed under their FESOP Permit #95100005. In fact, Respondents would have to emit an additional 1,000 gallons per year to reach the emissions allowed under their FESOP. As stated above, Respondents verified this fact and Complainant did not controvert this properly with supported material facts.

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

CONCLUSION

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

**AMERICAN DRAPERY CLEANERS &
FLAMEPROOFERS and RICHARD ZELL,
Respondents,**

By: Michele Rocawich
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