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JUL 07 2004

STATE OF ILLINOIS  
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL PROTECTION )  
AGENCY, )

Complainant, )

v. )

ARLYN RAY d/b/a ARLYN RAY )  
CONSTRUCTION, TOM ROMERO d/b/a )  
ARLYN RAY EXTERIORS, ROBERT J. )  
ADAMS AND RITA M. ADAMS, )

Respondents. )

AC 04- 57

(IEPA No. 109-04-AC)

NOTICE OF FILING

To: Robert & Rita Adams  
1776 County Road 850E  
Metamora, Illinois 61548

Carol Sudman  
Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
P.O. Box 19274  
Springfield, Illinois 62794-9274

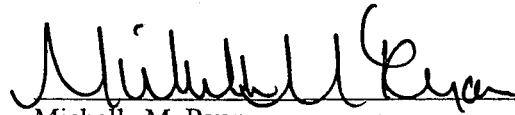
Arlyn Ray, d/b/a Arlyn Ray Exteriors  
303 B Georgia Pkwy  
Washington, Illinois 61571

Timothy A. McGuire  
McEachern & Dickaus, LC  
1750 South Brentwood Blvd., Suite 300  
St. Louis, Missouri 63144

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois the following instrument(s) entitled MOTION TO DISMISS RESPONDENT TOM ROMERO AND MOTION FOR DEFAULT JUDGMENT AS TO RESPONDENT ROBERT J. ADAMS.

Respectfully submitted,

Dated: July 1, 2004



Michelle M. Ryan  
Special Assistant Attorney General

Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
(217) 782-5544

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(IEPA No. 109-04-AC)

MOTION TO DISMISS RESPONDENT TOM ROMERO  
AND MOTION FOR DEFAULT JUDGMENT  
AS TO RESPONDENT ROBERT J. ADAMS

NOW COMES the Complainant, the Illinois Environmental Protection Agency ("Illinois EPA"), by and through its attorney, Special Assistant Attorney General Michelle M. Ryan, pursuant to 35 Ill. Adm. Code 108.402 and 108.404, and respectfully states as follows:

MOTION TO DISMISS

(1) On March 23, 2004, Illinois EPA issued an Administrative Citation to several Respondents, including Tom Romero d/b/a Arlyn Ray Exteriors.

(2) At the time the citation was issued, "Arlyn Ray Exteriors" was the name Illinois EPA knew to be associated with Mr. Romero. A search of the Secretary of State's corporate information database did not return any results for this name, therefore, the citation was issued to the individual Respondent.

(3) It was not until Respondent Romero filed his petition for review that Illinois EPA became aware that "Arlyn Ray Exteriors, LLC" was the appropriate defendant in this matter.

(4) Illinois EPA has no evidence that Tom Romero was involved in this matter, other than as a representative of Arlyn Ray Exteriors, LLC.

(5) Because Tom Romero is an improper Respondent, and because the appropriate Respondent, Arlyn Ray Exteriors, LLC cannot be timely served within 60 days of the inspection date as required by 415 ILCS 5/31.1(b), this Administrative Citation should be dismissed as to Respondent Tom Romero.

MOTION FOR DEFAULT JUDGMENT

(6) Illinois EPA apologizes to the Board that the proof of service information was not clear as to Respondent Robert J. Adams.

(7) As identified in the Certificate of Service filed with this Administrative Citation on March 16, 2004, Respondent Robert Adams was listed as a co-addressee on the certified mailing with Respondent Rita Adams (mail receipt also attached as Exhibit A).

(8) On April 8, 2004, inspector Robert Wagner also hand-delivered the package for Respondents Robert and Rita Adams to Rita Adams at their place of abode (*see* Affidavit filed April 21, 2004).

(9) Pursuant to 735 ILCS 5/2-203(a)(2) (2002), service may be made on an individual by leaving a copy at his usual place of abode with a person residing there who is 13 years or older, and informing that person of the contents, and sending a copy by mail to the individual at his usual place of abode.

(10) The requirement of mailing was met on March 16, 2004, as shown in the Certificate of Service filed On March 16, 2004 with this Administrative Citation. The remaining requirements of abode service were met by inspector Robert Wagner (Exhibit C).

(12) As such, Respondent Robert Adams was properly served on April 8, 2004, by hand-delivery to Rita Adams at his place of abode.

(13) Because a Petition for Review was not filed by Respondent Robert Adams by May 13, 2004, he is in default.

WHEREFORE, the Illinois Environmental Protection Agency requests that the Board dismiss the pending action as to Respondent Tom Romero, and issue a default order against Respondent Robert J. Adams.

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,  
Complainant,

DATED: July 1, 2004

---

Michelle M. Ryan  
Special Assistant Attorney General

Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
(217) 782-5544

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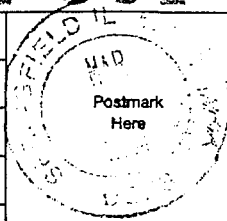
STATE OF ILLINOIS  
Pollution Control Board

**U.S. Postal Service**  
**CERTIFIED MAIL RECEIPT**  
(Domestic Mail Only; No Insurance Coverage Provided)

7000 1670 0008 6337 9726

**OFFICIAL USE**

Postage	\$
Certified Fee	2.10
Return Receipt Fee (Endorsement Required)	1.50
Restricted Delivery Fee (Endorsement Required)	
<b>Total Postage &amp; Fees</b>	<b>\$</b>



Sent To **Robert & Rita Adams**  
Street, Apt. No., or PO Box No.  
**1776 County Road 850E**  
City, State, ZIP+4  
**Metamora, IL 61548**

See Reverse for Instructions

**EXHIBIT**

**A**

TAMMEX

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

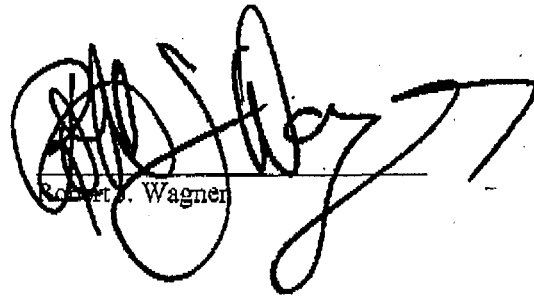
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	AC 04-57
	)	
v.	)	(IEPA No. 109-04-AC)
	)	
ARLYN RAY d/b/a ARLYN RAY	)	
CONSTRUCTION, TOM ROMERO d/b/a	)	
ARLYN RAY EXTERIORS, ROBERT J.	)	
ADAMS AND RITA M. ADAMS,	)	
	)	
Respondents.	)	

AFFIDAVIT

Affiant, Robert J. Wagner, being first duly sworn, voluntarily deposes and states as follows:

1. I am employed by the Land Pollution Control Division of the Illinois Environmental Protection Agency and have been so employed at all times pertinent hereto.
2. I hereby affirm, certify and state that I personally hand-delivered Administrative Citation 109-04-AC for Robert and Rita Adams on April 8, 2004 to Rita Adams at their residence at 1776 County Road 850E, Metamora, Illinois
3. On April 8, 2004, Rita Adams was at least 13 years of age, and I informed her of the contents of the envelope.

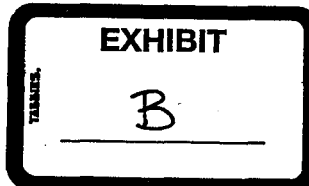
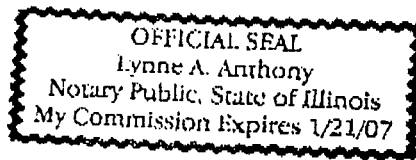
FURTHER AFFIANT SAYETH NOT.



Robert J. Wagner

Subscribed and sworn to before me  
this 30<sup>th</sup> day of June, 2004.

*Lynne A. Anthony*  
NOTARY PUBLIC



**PROOF OF SERVICE**

I hereby certify that I did on the 1<sup>st</sup> day of July, 2004, send by U.S. Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box the following instrument(s) entitled MOTION TO DISMISS RESPONDENT TOM ROMERO AND MOTION FOR DEFAULT JUDGMENT AS TO RESPONDENT ROBERT J. ADAMS

To: Robert & Rita Adams  
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Metamora, Illinois 61548

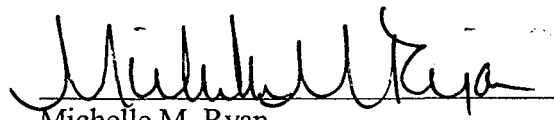
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Washington, Illinois 61571

Timothy A. McGuire  
McEachern & Dickaus, LC  
1750 South Brentwood Blvd., Suite 300  
St. Louis, Missouri 63144

and the original and nine (9) true and correct copies of the same foregoing instruments on the same date by U.S. Mail with postage thereon fully prepaid.

To: Dorothy Gunn, Clerk  
Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601

  
Michelle M. Ryan  
Special Assistant Attorney General

Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
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