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AUG 10 2004

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS, )  
 )  
Complainant, )  
 )  
v. )  
 )  
DRAW DRAPE CLEANERS, INC., )  
an Illinois corporation, AMERICAN )  
DRAPERY CLEANERS & FIREPROOFERS, )  
INC., an Illinois corporation, and )  
RICHARD ZELL, an Illinois resident, )  
 )  
Respondents. )

No. PCB 03-51  
(Enforcement - Air)

NOTICE OF FILING

To: See attached service list.

PLEASE TAKE NOTICE that the Complainant, PEOPLE OF THE STATE OF ILLINOIS, filed with the Illinois Pollution Control Board, its MOTION FOR LEAVE TO FILE A REPLY and its REPLY TO RESPONDENT'S RESPONSE TO COMPLAINANT'S SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT true and correct copies of which are attached hereto and are hereby served upon you.

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

BY:



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

Dated: August 10, 2004

SERVICE LIST

Ms. Michele Rocawich, Esq.  
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P.O. Box 19276  
Springfield, Illinois 62702

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**COMPLAINANT'S MOTION FOR LEAVE TO FILE A REPLY**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, pursuant to Section 101.500(e) of the Illinois Pollution Control Board's ("Board") Regulations, 35 Ill. Adm. Code 101.500(e), requests that the Board grant it leave to file a Reply to Respondents' Response to Complainant's Motion for Partial Summary Judgment, which Respondents filed on August 2, 2004. Complainant contends that it is filing its Motion for Leave to File a Reply in a timely manner and that it will suffer material prejudice if the Board does not grant it leave to file a Reply.

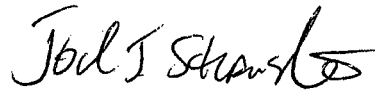
Respectfully submitted,

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

BY:



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Assistant Attorney General  
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COMPLAINANT'S REPLY TO RESPONDENTS' RESPONSE TO COMPLAINANT'S  
SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, ex rel. LISA MADIGAN, Attorney General of the State of Illinois, replies to Respondents' Response to Complainant's Second Motion for Partial Summary Judgment. In support of its reply, Complainant states as follows:

BACKGROUND

On June 27, 2003, Complainant filed a Motion for Partial Summary Judgment against Respondent Draw Drape Cleaners, Inc. ("Draw Drape"). In this Motion for Partial Summary Judgment, Complainant argued that there were no material questions of fact or law with respect to Counts IV, V, VII, and VIII of the Complaint; and therefore, Complainant was entitled to summary judgment on those Counts.

On July 18, 2003, Respondent Draw Drape filed its Response to Complainant's Motion for Partial Summary Judgment. In this

Response, Respondent Draw Drape argued, *inter alia*, that Complainant was not entitled to partial summary judgment because Complainant's Motion was based on unsworn or unverified statements. In its July 31, 2003 Reply to Respondent's Response to Complainant's Motion for Partial Summary Judgment, Complainant stated that its Motion was based on Respondent Draw Drape's sworn answers to interrogatories, and that pursuant to Supreme Court Rule 213(h), "answers to interrogatories may be used in evidence to the same extent as a discovery deposition."

Following a hearing on the arguments, the Board granted the Complainant's Motion for Partial Summary Judgment against Respondent Draw Drape for Counts IV, V, VII, and VIII on August 21, 2003.

On December 30, 2003, Complainant filed an amended Complaint, which added Respondent American Drapery Cleaners and Flameproofers, Inc. ("ADC&FI") and Respondent Richard Zell ("Zell"). Subsequently, Complainant filed its Second Motion for Partial Summary Judgment against the new Respondents on July 2, 2004. Complainant's Second Motion Complainant argued that there were no material questions of fact or law with respect to Counts IV, V, VII, and VIII of the Complaint; and therefore, Complainant was entitled to summary judgment against Respondents ADC&FI and Zell on those Counts.

On August 2, 2004, Respondent filed its Response to

Complainant's Second Motion for Partial Summary Judgment. Respondents' August 2, 2004 Response is identical to its July 18, 2003 Response to the Complainant's First Motion for Partial Summary Judgment. Respondent again makes the argument, *inter alia*, that Complainant's Motion is based on unsworn or unverified statements.

#### ARGUMENT

Because Respondent's Response to Complainant's Second Motion for Partial Summary Judgment is identical to its Response to the First Motion for Partial Summary Judgment, Complainant makes the same arguments in this Reply as it made in its July 31, 2003 Reply. Therefore, Complainant incorporates by reference herein the argument in its Reply to Respondent's Response to Complainant's Motion for Partial Summary Judgment filed on July 31, 2003.

#### CONCLUSION

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

1. Enter an order granting summary judgment for Complainant and against Respondents ADC&FI and Zell for Counts IV, V, VII, and VIII in the Complaint;
2. Order that Respondents ADC&FI and Zell 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 ADC&FI and Zell; and

4. Order any other relief it deems just and appropriate.

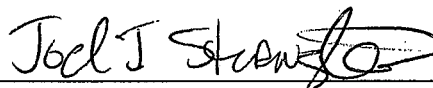
Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS  
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MATTHEW J. DUNN, Chief  
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BY:



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Assistant Attorney General  
Environmental Bureau  
188 West Randolph, 20<sup>th</sup> Floor  
Chicago, IL 60601  
(312) 814-6986



CERTIFICATE OF SERVICE

I, JOEL J. STERNSTEIN, an Assistant Attorney General, do certify that I caused to be mailed this 10<sup>th</sup> day of August 2004, the foregoing COMPLAINANT'S MOTION FOR LEAVE TO FILE A REPLY and COMPLAINANT'S REPLY TO RESPONDENT'S RESPONSE TO COMPLAINANT'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 at 100 West Randolph Street, Chicago, Illinois, 60601.

  
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JOEL J. STERNSTEIN