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STATE OF ILLINOIS  
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

1<sup>ST</sup> AYD CORPORATION, )  
)  
Complainant, )  
)  
v. )  
)  
S&S AUTOMOTIVE, INC., )  
)  
Respondent. )

PCB. No. 11-28

CITIZEN'S COMPLAINT

Complainant, 1<sup>ST</sup> AYD CORPORATION, through its attorneys, Sorling, Northrup, Hanna, Cullen & Cochran, Ltd., Stephen F. Hedinger, of Counsel, complaining of Respondent S&S AUTOMOTIVE, INC., states as follows:

1. Complainant is a Delaware corporation, duly authorized to do business in the State of Illinois, and is in the business of manufacturing and distributing industrial maintenance and sanitation products throughout the United States, including within Illinois. Complainant's product line includes, among many other things, automotive maintenance and repair products.

2. Respondent is an Illinois corporation authorized to do business in the State of Illinois, and among other things is in the business of supplying cleaners, solvents, and other materials for sale in Illinois for use by household and institutional consumers for cleaning, repairing, and otherwise treating or protecting automobiles and automotive parts and components.

3. Among other things, Respondent has sold, as one of its products, automotive brake cleaner for use by automobile service centers and automotive supply retailers. Respondent is a competitor of Complainant in certain consumer markets, including the market for automotive brake cleaners.

4. In or about August of 2010, Respondent sold a product labeled "Tool and Parts Cleaner" which was manufactured after July 1, 2009, to a customer known as Friendly Ford, in Roselle, DuPage County, Illinois. Friendly Ford is a Ford automobile sales and service center and purchased the "Tool and Parts Cleaner" for use in its automotive service activities as a cleaning product, and in particular to use as an automotive brake cleaner.

5. Roselle Service Center is an automobile service center, also located in Roselle, DuPage County, Illinois, and it purchased the same "Tool and Parts Cleaner" product from Respondent for use in its automotive service activities as a cleaning product, and in particular to use as an automotive brake cleaner, in or about August of 2010, delivered under invoice dated August 2, 2010.

6. The sales personnel of Respondent who visit customers and potential customers to sell the "Tool and Parts Cleaner" inform the customers and potential customers that the "Tool and Parts Cleaner" has precisely the same formulation as the automotive brake cleaner that had been manufactured prior to July 1, 2009, and therefore is suitable for use as an automotive brake cleaner.

7. The "Tool and Parts Cleaner" sold by Respondent in August of 2010 is in an aerosol can, and among other things the label on the can states, "Our parts cleaning solvent is a heavy duty compound that effectively removes oils, dirt, and many other soils from ferrous and non-ferrous metal parts. To help retard the release of asbestos dust and other airborne particulate matter, follow the DIRECTIONS FOR USE carefully, and in numerical order." (Capitalization in original).

8. The can label for Respondent's "Tool and Parts Cleaner" states its ingredients to be "Heptane (CAS #142-82-5), Ethanol (CAS #64-17-5), and Carbon Dioxide (CAS #124-38-9)" [Sic].

9. The material safety data sheet ("MSDS") for Respondent's "Tool and Parts Cleaner" indicates that the product was manufactured by the Penray Companies, that it is an "aerosol cleaner containing organic solvents," that as one of its "physical and chemical properties": "VOC: 100%", and that it is 60% to 100% heptane, 5% to 10% ethanol, .01% to 1% isopropanol, and 1% to 5% carbon dioxide. A true and correct copy of the MSDS for Respondent's "Tool and Parts Cleaner" is attached hereto as Exhibit No. 1.

10. The only automotive parts normally likely to have contact with asbestos dust are brake parts.

11. Section 223.205(a) of this Board's air regulations, 35 Ill. Adm. Code §223.205(a), provides in pertinent part that "no person shall sell, supply, offer for sale, or manufacture for sale in Illinois any consumer product manufactured on or after July 1, 2009 that contains VOMs in excess of the limits specified in this subsection." That subsection also identifies "Automotive Brake Cleaners" as subject to a percentage VOM by weight of 45, see 35 Ill. Adm. Code §223.205(a)(7), and identifies "General Purpose Degreasers" as subject to a percentage VOM by weight of 50. See 35 Ill. Adm. Code §223.205(a)(25)(A).

12. Section 223.260(b) of this Board's air regulations, 35 Ill. Adm. Code §223.260(b), provides in pertinent part that, "[n]otwithstanding the definition of product category in Section 223.203, if anywhere on the container or packaging of any consumer product manufactured on or after July 1, 2009, . . . or on any sticker or label affixed to the container or packaging, any representation is made that the product may be used as, or is suitable for use as, a consumer

product for which a lower VOM limit is specified in Section 223.205(a), then the lower VOM limit shall apply."

13. Section 223.203 of this Board's air regulations, 35 Ill. Adm. Code §223.203, among other things defines "Automotive Brake Cleaner" as "a cleaning product designed to remove oil, grease, brake fluid, brake pad material or dirt from motor vehicle brake mechanisms."

14. Section 223.203 of this Board's air regulations, 35 Ill. Adm. Code §223.203, among other things defines "General Purpose Degreaser" as "any product labeled to remove or dissolve grease, grime, oil and other oil-based contaminants from a variety of substrates, including automotive or miscellaneous metallic parts."

15. The "Tool and Parts Cleaner" sold by Respondent to Friendly Ford and to Roselle Service Center during August of 2010 is a "consumer product" as defined by 35 Ill. Adm. Code §223.203.

16. The label on the "Tool and Parts Cleaner" sold by Respondent to Friendly Ford and to Roselle Service Center during August of 2010 represented that the product may be used or is suitable for use as an "Automotive Brake Cleaner" as defined in 35 Ill. Adm. Code §223.203.

17. Pursuant to 35 Ill. Adm. Code §223.205(a)(7), "Automotive Brake Cleaners" are subject to a maximum VOM limit of 45%.

18. The label on the "Tool and Parts Cleaner" sold by Respondent to Friendly Ford and to Roselle Service Center during August of 2010 represented that the product may be used or is suitable for use as a "General Purpose Degreaser" as defined in 35 Ill. Adm. Code §223.203.

19. Pursuant to 35 Ill. Adm. Code §223.205(a)(25)(A), "General Purpose Degreasers" are subject to a maximum VOM limit of 50%.

20. The "Tool and Parts Cleaner" sold by Respondent to Friendly Ford and to Roselle Service Center during August of 2010 is 100% VOM by weight, and so exceeds the amount set forth in 35 Ill. Adm. Code §223.205(a)(7) and the amount set forth in 35 Ill. Adm. Code §223.205(a)(25)(A).

21. Respondent has violated 35 Ill. Adm. Code §223.205(a), by selling in Illinois a consumer product manufactured on or after July 1, 2009, that contained VOM in excess of the applicable regulatory limit.

22. Pursuant to 35 Ill. Adm. Code §223.200, the VOM limits set forth in 35 Ill. Adm. Code §223.205 are intended "to limit emissions of volatile organic materials (VOMs) by requiring reductions in the VOM content of consumer and commercial products." 35 Ill. Adm. Code §223.200. The regulations set forth in §223.205 "apply to any person who sells, supplies, offers for sale, or manufactures consumer products on or after July 1, 2009, for use in Illinois." 35 Ill. Adm. Code §223.201.

23. Respondent has violated §9(d) of the Illinois Environmental Protection Act, 415 ILCS 5/9(d), which provides that, "No person shall: . . . (d) Sell, offer, or use any . . . other article in any areas in which the Board may by regulation forbid its sale, offer or use for reasons of air-pollution control."

24. Pursuant to §31(d)(1) of the Illinois Environmental Protection Act, 415 ILCS 5/31(d)(1), Complainant requests that this Board enter an order pursuant to Section 42 of the Illinois Environmental Protection Act, 415 ILCS 5/42, finding Respondent to be in violation of the cited statutory provision and Board regulations, ordering Respondent to immediately cease and desist all such violations and acts and omissions which cause or tend to cause such violations, and imposing an appropriate penalty upon Respondent sufficient to punish

Respondent's violation, to disgorge the economic benefits reaped by Respondent as a result of its non-compliance, and to encourage future compliance with all applicable environmental standards and requirements.


WHEREFORE Complainant, 1<sup>ST</sup> AYD CORPORATION, requests that this Board enter an order against Respondent, S&S AUTOMOTIVE, INC., finding Respondent to be in violation of the Illinois Environmental Protection Act for the reasons stated in this Citizen's Complaint, ordering Respondent to immediately cease and desist from the identified violations of the Illinois Environmental Protection Act and this Board's regulations, ordering Respondent to pay an appropriate penalty pursuant to the Illinois Environmental Protection Act, and for all such other and further relief as this Board deems appropriate and available.

Date December 10, 2010

Respectfully submitted,

1<sup>ST</sup> AYD CORPORATION, Complainant

By:

  
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## NOTICE TO RESPONDENT

**NOTE: THIS STATEMENT MUST BE INCLUDED IN THE SERVICE OF THE FORMAL COMPLAINT ON THE RESPONDENT**

### INFORMATION FOR RESPONDENT RECEIVING FORMAL COMPLAINT

Please take notice that today I filed with the Clerk of the Illinois Pollution Control Board (Board) a formal complaint, a copy of which is served on you along with this notice. You may be required to attend a hearing on a date set by the Board.

Information about the formal complaint process before the Board is found in the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.*) and the Board's procedural rules (35 Ill. Adm. Code 101 and 103). These can be accessed at the Board's Web site ([www.ipcb.state.il.us](http://www.ipcb.state.il.us)). The following is a summary of some of the most important points in the Act and the Board's procedural rules. It is provided for general informational purposes only and does not constitute legal advice or substitute for the provisions of any statute, rule, or regulation:

#### Board Accepting Formal Complaint for Hearing; Motions

The Board will not accept this formal complaint for hearing if the Board finds that it is either "duplicative" or "frivolous" within the meaning of Section 31(d) of the Act (415 ILCS 5/31(d)) and Section 101.202 of the Board's procedural rules (35 Ill. Adm. Code 101.202). "Duplicative" means that an identical or substantially similar case is already pending before the Board or in court. *See* 35 Ill. Adm. Code 103.212(a) and item 10 of the formal complaint.

"Frivolous" means that the formal complaint seeks relief that the Board does not have the authority to grant, or fails to state a cause of action upon which the Board can grant relief. For example, the Board has the authority to order a respondent to stop polluting and pay a civil penalty, to implement pollution abatement measures, or to perform a cleanup or reimburse cleanup costs. The Board does not have the authority, however, to award attorney fees to a citizen complainant. *See* 35 Ill. Adm. Code 103.212(a) and items 5 and 9 of the formal complaint.

If you believe that this formal complaint is duplicative or frivolous, you may file a motion with the Board, within 30 days after the date you were served with the complaint, requesting that the Board not accept the complaint for hearing. The motion must state the facts supporting your belief that the complaint is duplicative or frivolous. Memoranda, affidavits, and any other relevant documents may accompany the motion. If you need more time than 30 days to file a motion alleging that the complaint is duplicative or frivolous, you must file a motion for an extension of time within 30 days after service of the complaint. A motion for an extension of time must state why you need more time and the amount of additional time you need. Timely filing a motion alleging that the complaint is duplicative or frivolous will stay the 60-day period for filing an answer to the complaint. *See* 35 Ill. Adm. Code 103.204, 103.212(b).

All motions filed with the Board's Clerk must include an original, nine copies, and proof of service on the other parties. Service may be made in person, by U.S. mail, or by messenger service. Mail service is presumed complete four days after mailing. *See* 35 Ill. Adm. Code 101.300(c), 101.302, 101.304.

If you do not respond to the Board within 30 days after the date on which the complaint was served on you, the Board may find that the complaint is not duplicative or frivolous and accept the case for hearing. The Board will then assign a hearing officer who will contact you to schedule times for telephone status conferences and for hearing. *See* 35 Ill. Adm. Code 103.212(a).

### **Answer to Complaint**

You have the right to file an answer to this formal complaint within 60 days after you receive the complaint. If you timely file a motion alleging that the complaint is duplicative or frivolous, or a motion to strike, dismiss, or challenge the sufficiency of the complaint, then you may file an answer within 60 days after the Board rules on your motion. *See* 35 Ill. Adm. Code 101.506, 103.204(d), (e), 103.212(b).

The Board's procedural rules require the complainant to tell you as respondent that:

**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. 35 Ill. Adm. Code 103.204(f).**

### **Necessity of an Attorney**

Under Illinois law, an association, citizens group, unit of local government, or corporation must be represented before the Board by an attorney. In addition, an individual who is not an attorney cannot represent another individual or other individuals before the Board. However, even if an individual is not an attorney, he or she is allowed to represent (1) himself or herself as an individual or (2) his or her unincorporated sole proprietorship. *See* 35 Ill. Adm. Code 101.400(a). Such an individual may nevertheless wish to have an attorney prepare an answer and any motions or briefs, and present a defense at hearing.

### **Costs**

In defending against this formal complaint, you are responsible for your attorney fees, duplicating charges, travel expenses, witness fees, and any other costs that you or your attorney may incur. The Board requires no filing fee to file your answer or any other document with the Board. The Board will pay any hearing costs (*e.g.*, hearing room rental, court reporting fees, hearing officer expenses).

If you have any questions, please contact the Clerk's Office at (312) 814-3629.



**CERTIFICATE OF SERVICE**

I, the undersigned, an attorney, certify that I have served a copy of the foregoing Citizen's Complaint upon Respondent at the following address:

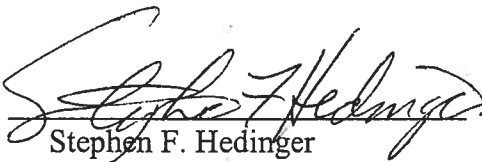
Steven H. Lavin, Registered Agent  
444 North Michigan Avenue  
Suite 2600  
Chicago, IL 60611

by depositing same in the U.S. Mail, certified mail/return receipt requested, postage prepaid, on this 10<sup>th</sup> day of December, 2010.

Similarly, the original and nine copies were mailed to:

Mr. John T. Therriault  
Assistant Clerk of the Board  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph, Suite 11-500  
Chicago, IL 60601

by depositing same in the U.S. Mail, first class, postage prepaid, on this 10<sup>th</sup> day of December, 2010.

By:   
Stephen F. Hedinger  
Attorney for Complainant

Subscribed and sworn to before me this  
10<sup>th</sup> day of December, 2010.

  
\_\_\_\_\_  
Notary Public



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