

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

DISTRESSED PROPERTIES, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 15-108
	)	PCB 16-32
ILLINOIS ENVIRONMENTAL	)	PCB 16-46
PROTECTION AGENCY,	)	(UST Appeal)
	)	(Consolidated)
Respondent.	)	

**NOTICE OF FILING**

To: John T. Therriault  
Clerk of the Board  
Illinois Pollution Control Board  
100 West Randolph Street, Suite 11-500  
Chicago, IL 60601-3218

James Anderson  
Distressed Properties, Inc.  
711 Main Street  
Batavia, IL 60510  
jimao2tube@gmail.com

Hearing Officer Bradley P. Halloran  
Illinois Pollution Control Board  
James R. Thompson Center, Suite 11-500  
100 West Randolph Street  
Chicago, IL 60601  
Brad.Halloran@Illinois.gov

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board Illinois EPA's MOTION TO DISMISS, a copy of which is served upon you.

Respectfully submitted,

Dated: July 1, 2016

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,

Scott B. Sievers  
Attorney Registration No. 6275924  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276  
(217) 782-5544  
Scott.Sievers@Illinois.gov

Respondent,

BY: /s/ Scott B. Sievers  
Scott B. Sievers  
Special Assistant Attorney General

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**MOTION TO DISMISS**

NOW COMES the Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“Illinois EPA”), by and through its attorney, Special Assistant Attorney General Scott B. Sievers, and for its motion to dismiss the Petitioner’s action states the following:

1. The Supreme Court of Illinois has held that “[a] corporation must be represented by counsel in legal proceedings.” *Downtown Disposal Services, Inc. v. City of Chicago*, 2012 IL 112040, ¶ 17.

2. Section 101.400 of the Pollution Control Board’s procedural rules provides that, while individuals may appear on their own behalf before the Board, a corporation “must appear through an attorney-at-law licensed and registered to practice law.” 35 Ill. Adm. Code 101.400(a)(2); *see also* 35 Ill. Adm. Code 101.202 (Board definition of “person” includes both “individual” and “corporation”). A corporation’s failure to appear before the Board through an attorney may be grounds for dismissal of a petition. *See In the Matter of: Petition of Midway RACS, LLC for Adjusted Standard from 35 Ill. Adm Code 218.586*, at 2.

3. On May 24, 2016, attorney Elizabeth S. Harvey and her law firm of Swanson, Martin & Bell, LLP withdrew their appearance before this Board as counsel for the Petitioner.

4. On June 1, 2016, Petitioner's part owner, James Anderson, participated in a telephonic status conference with the Board hearing officer, at which time Mr. Anderson, a non-attorney, was informed that the Petitioner, being a corporation, was required to be represented before this Board by a licensed attorney. Mr. Anderson said he would discuss the issue with his business partner prior to the next status conference.

5. On June 16, 2016, the hearing officer held another telephonic status conference and reiterated that the Petitioner must be represented before this Board by a licensed attorney. Mr. Anderson said he would continue to discuss the issue with his business partner.

6. On June 30, 2016, the hearing officer held another telephone status conference and restated that this Board's rules required the Petitioner to be represented through a licensed attorney. Mr. Anderson indicated that no attorney had been retained on behalf of the Petitioner.

7. The Petitioner is a corporation, and Illinois law and this Board's rules require that it appear through a licensed attorney. The hearing officer has repeatedly so informed Mr. Anderson. Only Mr. Anderson, a non-attorney, has participated in this action on behalf of the Petitioner since its prior attorney and her law firm withdrew from this case. As no duly licensed Illinois attorney has entered his or her appearance on behalf of the Petitioner, and as the Petitioner is required as a corporation to appear before the Board through an attorney and has failed to do so, the Respondent moves for dismissal of the instant action with prejudice.

WHEREFORE, the Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, prays that this honorable Board grant the Respondent's Motion to Dismiss and dismiss the instant action with prejudice.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,

Respondent,

Dated: July 1, 2016

Scott B. Sievers  
Attorney Registration No. 6275924  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276  
(217) 782-5544  
Scott.Sievers@Illinois.gov

BY: /s/ Scott B. Sievers  
Scott B. Sievers  
Special Assistant Attorney General

**Distressed Properties, Inc. v. Illinois EPA**  
**PCB Nos. 15-108, 16-32, and 16-46**

**CERTIFICATE OF SERVICE**

I, the undersigned, on affirmation state the following:

1. That I have served the attached MOTION TO DISMISS upon Distressed Properties, Inc. at the mailing address of James Anderson, Distressed Properties, Inc., 711 Main Street, Batavia, IL 60510 and at the e-mail address of jima02tube@gmail.com and upon Hearing Officer Bradley P. Halloran at the e-mail address of Brad.Halloran@Illinois.gov.
2. That my e-mail address is Scott.Sievers@Illinois.gov.
3. That the number of pages in the e-mail transmission is 5.
4. That the e-mail transmission took place before 5:00 p.m. on the date of July 1, 2016.

Respectfully submitted,

Dated: July 1, 2016

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,

Scott B. Sievers  
Attorney Registration No. 6275924  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276  
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Respondent,

BY: /s/ Scott B. Sievers  
Scott B. Sievers  
Special Assistant Attorney General