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**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

MAR 25 2004

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS, by )  
LISA MADIGAN, Attorney General of the )  
State of Illinois, )  
 )  
Complainant, )  
 )  
v. )  
 )  
CROMWELL-PHOENIX, INC., an Illinois )  
Corporation, )  
 )  
Respondent. )

PCB No. 04-136  
(Enforcement - Air)

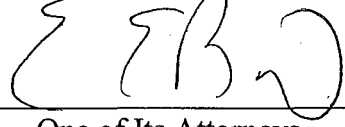
**NOTICE OF FILING**

**TO:** Michael C. Partee  
Assistant Attorney General  
Environmental Bureau North  
188 West Randolph Street, Suite 2001  
Chicago, IL 60601

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

PLEASE TAKE NOTICE that on March 25, 2004, we filed with the Clerk of the Illinois Pollution Control Board, 100 West Randolph Street, James R. Thompson Center Suite 11-500, Chicago, Illinois, 60601-3218, an original and nine (9) copies of Cromwell-Phoenix, Inc.'s **RESPONDENT'S ANSWER TO COMPLAINANT'S COMPLAINT and APPEARANCE**, copies of which are attached hereto and hereby served upon you.

CROMWELL-PHOENIX, INC.

By   
One of Its Attorneys

Eric E. Boyd  
SEYFARTH SHAW  
55 E. Monroe St., Suite 4200  
Chicago, Illinois 60603  
(312) 346-8000

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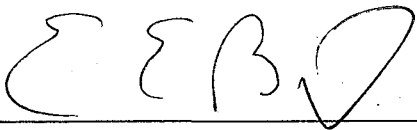
CROMWELL-PHOENIX, INC., an Illinois )  
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Respondent. )

APPEARANCE

Eric E. Boyd hereby files his appearance in this proceeding on behalf of Cromwell-Phoenix, Inc. Eric E. Boyd is designated as the lead attorney for purposes of mail and phone contact pertaining to this proceeding.

CROMWELL-PHOENIX, INC.

By  \_\_\_\_\_  
One of Its Attorneys

Eric E. Boyd  
Seyfarth Shaw  
55 East Monroe Street  
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CROMWELL-PHOENIX, INC., an Illinois )  
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Respondent. )

**RESPONDENT'S ANSWER TO COMPLAINANT'S COMPLAINT**

NOW COMES Respondent Cromwell-Phoenix, Inc. (hereinafter "Cromwell"), by and through its attorneys, Seyfarth Shaw, and for its Answer to Complainant's Complaint, states as follows:

**COUNT I**

**CAUSING, THREATENING OR ALLOWING AIR POLLUTION**

1. This Count is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"), pursuant to Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2002).

**ANSWER:** Respondent is without sufficient information to form a belief regarding the truth or accuracy of the allegations set forth in Paragraph 1 and, therefore, denies same.

2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2002), and charged, *inter alia*, with the duty of enforcing the Act.

**ANSWER:** Respondent admits the allegations set forth in Paragraph 2.

3. At all times relevant to the Complaint, CROMWELL-PHOENIX, INC. ("Cromwell"), was and is an Illinois corporation, authorized to do business in the State of Illinois.

THIS FILING IS MADE ON RECYCLED PAPER

**ANSWER:** Respondent admits the allegations set forth in Paragraph 3.

4. From at least 1993 until about September 2000, Cromwell operated a facility located at 7401 South Pulaski Road, Chicago, Cook County, Illinois ("former facility").

**ANSWER:** Respondent admits the allegations set forth in Paragraph 4.

5. At its former facility, Cromwell produced corrosion inhibiting packaging materials by using two paper coating machines to coat paper with corrosion inhibiting compounds.

**ANSWER:** Respondent denies the allegations set forth in Paragraph 5.

6. These corrosion inhibiting compounds contained more than 0.28 kilograms per liter or 2.3 pounds per gallon volatile organic material ("VOM"), which was emitted to the environment from Cromwell's former facility.

**ANSWER:** Respondent denies the allegations set forth in Paragraph 6.

7. On June 16, 1993, Cromwell's former facility was issued operating permit no. 88050052 by the Illinois EPA, which expired on June 16, 1994.

**ANSWER:** Respondent denies the allegations set forth in Paragraph 7.

8. Cromwell did not renew operating permit no. 88050052.

**ANSWER:** Respondent denies the allegations set forth in Paragraph 8.

9. In about 2000, or a date better known to Cromwell, Cromwell moved its operations to another facility located at 12701 South Ridgeway Avenue, Alsip, Cook County, Illinois ("current facility").

**ANSWER:** Respondent admits the allegations set forth in Paragraph 9.

10. At its current facility, Cromwell constructed and commenced operation of the same type of paper coating machines as it had operated at its former facility and began to apply the same type of corrosion inhibiting compounds containing more than 0.28 kilograms per liter or 2.3 pounds per gallon VOM as it had applied at its former facility.

**ANSWER:** Respondent denies the allegations set forth in Paragraph 10.

11. On April 27, 2001, while attempting to inspect another business, an Illinois EPA representative discovered Cromwell's current facility. On the same date, the Illinois EPA representative proceeded to inspect Cromwell's current facility.

**ANSWER:** Respondent is without sufficient information to form a belief regarding the truth or accuracy of the first sentence of Paragraph 11 and, therefore, denies same. Respondent admits the allegations set forth in the second sentence of Paragraph 11.

12. Based on the April 27, 2001 inspection, the Illinois EPA representative determined that Cromwell did not obtain construction and/or operating permits from the Illinois EPA for its current facility and that Cromwell did not otherwise demonstrate compliance with the air pollution rules and regulations at its current facility.

**ANSWER:** Respondent is without sufficient information to form a belief regarding the truth or accuracy of the allegations set forth in Paragraph 12 and, therefore, denies same.

13. The Illinois EPA issued to Cromwell a Violation Notice and Notice of Intent to Pursue Legal Action, dated November 20, 2001, and March 19, 2002, respectively.

**ANSWER:** Respondent admits the allegations set forth in Paragraph 13.

14. On May 29, 2003, after receiving a Violation Notice and Notice of Intent to Pursue Legal Action, Cromwell filed a Petition with the Board seeking an Adjusted Standard from the VOM paper coating requirements under 35 Ill. Adm. Code 218.204(c).

**ANSWER:** Respondent admits the allegations set forth in Paragraph 14.

15. Cromwell's current facility continued to operate without a permit until September 18, 2003, when the Board granted its Adjusted Standard request.

**ANSWER:** Respondent denies the allegations set forth in Paragraph 15.

16. Cromwell's former and current facilities are and were subject to the Act and the Illinois Pollution Control Board's ("Board") Air Pollution Regulations promulgated under the Act at Title 35, Subtitle B, Chapter I of the Illinois Administrative Code.

**ANSWER:** Respondent admits the allegations set forth in Paragraph 16.

17. Section 9(a) of the Act, 415 ILCS 5/9(a) (2002), provides as follows:

Acts prohibited. No person shall:

- (a) Cause or threaten or allow the discharge or emission of any contaminant into the environment in any state so as to cause or tend to cause air pollution in Illinois either alone or in combination with contaminants from other source, or so as to violate regulations or standards adopted by the Board under this Act;

**ANSWER:** Since Section 9(a) of the Act speaks for itself, no answer to this allegation is required.

18. Section 201.141 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.141, provides as follows:

**Prohibition of Air Pollution.**

No person shall cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as, either alone or in combination with contaminants from other sources, to cause or tend to cause air pollution in Illinois, or so as to violate the provisions of this Chapter, or so as to prevent the attainment or maintenance of any applicable ambient air quality standard.

**ANSWER:** Since 35 Ill. Adm. Code 201.141 speaks for itself, no answer to this allegation is required.

19. Section 3.115 of the Act, 415 ILCS 5/3.115 (2002), defines air pollution as follows:

"AIR POLLUTION" is the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

**ANSWER:** Since 415 ILCS 5/3.115 of the Act speaks for itself, no answer to this allegation is required.

20. Section 3.165 of the Act, 415 ILCS 5/3.165 (2002), defines contaminant as follows:

"CONTAMINANT" is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

**ANSWER:** Since 415 ILCS 5/3.165 of the Act speaks for itself, no answer to this allegation is required.

21. The corrosion inhibiting compounds applied to paper at Cromwell's former and current facilities contain VOM and constitute contaminants as that term is defined in Section 3.165 of the Act.

**ANSWER:** Respondent denies the allegations set forth in Paragraph 21.

22. Section 3.315 of the Act, 415 ILCS 5/3.315 (2002), defines person as follows:

“PERSON” is any individual, partnership, co-partnership, firm, company, limited Liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agency or assigns.

**ANSWER:** Since 415 ILCS 5/3.315 of the Act speaks for itself, no answer to this allegation is required.

23. Cromwell, a corporation, is a “person” as that term is defined in Section 3.315 of the Act.

**ANSWER:** Respondent admits the allegations set forth in Paragraph 23.

24. From at least 1993 until September 18, 2003, when the Board granted Cromwell’s Adjusted Standard request, Cromwell caused, threatened or allowed the emission of contaminants to the environment from its former and current facilities so as to cause or tend to cause air pollution in Illinois.

**ANSWER:** Respondent denies the allegations set forth in Paragraph 24.

25. By causing or tending to cause air pollution in Illinois, Cromwell violated Section 9(a) of the Act, and Section 201.141 of the Board’s Air Pollution Regulations.

**ANSWER:** Respondent denies the allegations set forth in Paragraph 25.

## COUNT II

### CONSTRUCTING AN AIR POLLUTION SOURCE WITHOUT A CONSTRUCTION PERMIT

1-16. Complainant realleges and incorporates by reference herein paragraphs 1 through 16 of Count I as paragraphs 1 through 16 of this Count II.

**ANSWER:** Respondent incorporates its answers to Paragraphs 1 through 16 of Count I as its answers to Paragraphs 1 through 16 of Count II as if fully set forth herein.

17. Section 9(b) of the Act, 415 ILCS 5/9(b) (2002), provides as follows:

Acts prohibited. No person shall:

\* \* \*

(b) Construct, install, or operate any equipment, facility, vehicle, or aircraft capable of causing or contributing to air pollution or designed to prevent

air pollution, of any type designated by the Board regulations, without a permit granted by the [Illinois EPA], or in violation of any conditions imposed by such permit;

**ANSWER:** Since 415 ILCS 5/9(b) of the Act speaks for itself, no answer to Paragraph 17 is required.

18-22. Complainant realleges and incorporates by reference herein paragraphs 19 through 23 of Count I as paragraphs 18 through 22 of this Count II.

**ANSWER:** Respondent incorporates its answers to Paragraphs 19 through 23 of Count I as its answers to Paragraph 18 through 22 of Count II as if fully set forth herein.

23. Section 201.142 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.142, provides:

Construction Permit Required.

No person shall cause or allow the construction of any new emission source or any new air pollution control equipment, or cause or allow the modification of any existing emission source or air pollution control equipment, without first obtaining a construction permit from the [Illinois EPA], except as provided in Section 201.146.

**ANSWER:** Since 35 Ill. Adm. Code 201.142 speaks for itself, no answer to Paragraph 23 is required.

24. Section 201.102 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.102, provides, in relevant part, the following definitions:

"Construction": commencement of on-site fabrication, erection or installation of an emission source or of air pollution control equipment.

"Emission Source": any equipment or facility of a type capable of emitting specified air contaminants to the atmosphere.

"New Emission Source": any emissions source, the construction or modification of which is commenced on or after April 14, 1972.

"Specified Air Contaminant": any air contaminant as to which this Subtitle contains emission standards or other specific limitations . . .

**ANSWER:** Since 35 Ill. Adm. Code 201.102 speaks for itself, no answer to Paragraph 24 is required.



25. The VOM emitted from Cromwell's current facility is a "specified air contaminant" as that term is defined in Section 201.102 of the Board's Air Pollution Regulations.

**ANSWER:** Respondent admits the allegations set forth in Paragraph 25.

26. The fabrication, erection or installation of two paper coating machines which emit VOM at Cromwell's current facility after April 14, 1971, constitutes "construction" of a "new emission source" as these terms are defined in Section 201.102 of the Board's Air Pollution Regulations.

**ANSWER:** Respondent denies the allegations set forth in Paragraph 26.

27. By constructing a new emission source at its current facility after April 14, 1972, without first obtaining a construction permit from the Illinois EPA, Cromwell violated Section 9(b) of the Act and Section 201.142 of the Board's Air Pollution Regulations.

**ANSWER:** Respondent denies the allegations set forth in Paragraph 27.

### COUNT III

#### OPERATING AN AIR POLLUTION SOURCE WITHOUT AN OPERATING PERMIT

1-22. Complainant realleges and incorporates by reference herein paragraphs 1 through 22 of Count II as paragraphs 1 through 22 of this Count III.

**ANSWER:** Respondent incorporates its answers to Paragraphs 1 through 22 of Count II as its answers to Paragraphs 1 through 22 of Count III as if fully set forth herein.

23. Section 201.143 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.143, provides, in relevant part, as follows:

#### Operating Permits for New Sources:

No person shall cause or allow the operation of any new emission source or new air pollution control equipment of a type for which a construction permit is required by Section 201.142 without first obtaining an operating permit from the [Illinois EPA], except for such operations as may be authorized by the construction permit. Applications for operating permits shall be made at such times and contain such information (in addition to the information required by Section 201.157) as shall be specified in the construction permit.

**ANSWER:** Since 35 Ill. Adm. Code 201.143 speaks for itself, no answer to Paragraph 23 is required.

24-26. Complainant realleges and incorporates by reference herein paragraphs 24 through 26 of Count II as paragraphs 24 through 26 of this Count III.

**ANSWER:** Respondent incorporates its answers to Paragraphs 24 through 26 of Count II as its answers to Paragraphs 24 through 26 of Count III as if fully set forth herein.

27. By operating new emission sources at both its former and current facilities without an operating permit from June 16, 1994, when operating permit no. 88050052 expired, until September 18, 2003, when the Board granted Cromwell's Adjusted Standard request, Cromwell violated Section 9(b) of the Act and Section 201.143 of the Board's Air Pollution Regulations.

**ANSWER:** Respondent denies the allegations set forth in Paragraph 27.

#### **COUNT IV**

##### **EXCEEDING THE EMISSION LIMITATION FOR A COATING LINE**

1-22. Complainant realleges and incorporates by reference herein paragraphs 1 through 17 and 19 through 23 of Count I as paragraphs 1 through 22 of this Count IV.

**ANSWER:** Respondent incorporates its answers to Paragraphs 1 through 17 and 19 through 23 of Count I as its answers to Paragraphs 1 through 22 of Count IV as if fully set forth herein.

23. Section 218.103 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 218.103, provides, in relevant part, as follows:

The provisions of this Part shall apply to all sources located in the Chicago area, which is composed of Cook, DuPage, Kane, Lake, McHenry, and Will Counties, and Aux Sable Township and Goose Lake Township in Grundy County, and Oswego Township in Kendall County.

**ANSWER:** Since 35 Ill. Adm. Code 218.103 speaks for itself, no answer to Paragraph 23 is required.

24. Section 218.204(c) of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 218.204(c), provides, in relevant part, as follows:

Emission Limitations.

Except as provided in Sections 219.205, 218.207, 218.208, 218.212, 218.215 and 218.216 of this Subpart, no owner or operator of a coating line shall apply at any time any coating in which the VOM content exceeds the following emission limitations for the specified coating. Except as provided in Section 218.204(l), compliance with the emission limitations marked with an asterisk in this Section is required on or after March 15, 1996 . . . The emission limitations are as follows:

	*	*	*
(c) Paper Coating	<u>kg/l</u>	<u>lb/gal</u>	
	0.28*	2.3*	

**ANSWER:** Since 35 Ill. Adm. Code 218.204(c) speaks for itself, no answer to Paragraph 24 is required.

25. Section 211.4470 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 211.4470, defines paper coating as follows:

"Paper coating" means any protective, decorative or functional coating applied on paper, plastic film, or metallic foil to make certain products, including but not limited to adhesive tapes and labels, book covers, post cards, office copier paper, drafting paper, or pressure sensitive tapes. For purposes of 35 Ill. Adm. Code 218 and 219, paper coating includes coating applied by impregnation or saturation.

**ANSWER:** Since 35 Ill. Adm. Code Section 211.4470 speaks for itself, no answer to Paragraph 25 is required.

26. The coating of paper at Cromwell's former and current facilities with corrosion inhibiting compounds constitutes "paper coating" as that term is defined in Section 211.4470 of the Board's Air Pollution Regulations.

**ANSWER:** Respondent denies the allegations set forth in Paragraph 26.

27. The VOM content of the corrosion inhibiting compounds used on or after March 15, 1996, to coat paper at Cromwell's former and current facilities exceeds the emission limitation for paper coating of 0.28 kilograms per liter or 2.3 pounds per gallon under Section 218.204 of the Board's Air Pollution Regulations.

**ANSWER:** Respondent denies the allegations set forth in Paragraph 27.

28. By exceeding the emission limitation for paper coating at its former and current facilities from on or after March 15, 1996, until September 18, 2003, when the Board granted Cromwell's Adjusted Standard request, Cromwell violated Section 9(a) of the Act and Section 218.204(c) of the Board's Air Pollution Regulations.

**ANSWER:** Respondent denies the allegations set forth in Paragraph 28.

## COUNT V

### FAILING TO DEMONSTRATE COMPLIANCE WITH THE EMISSION LIMITATION FOR A COATING LINE

1-28. Complainant realleges and incorporates by reference herein paragraphs 1 through 28 of Count IV as paragraphs 1 through 28 of this Count V.

**ANSWER:** Respondent incorporates its answers to Paragraphs 1 through 28 of Count IV as its answers to Paragraphs 1 through 28 of Count V as if fully set forth herein.

29. Section 218.204 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 218.204, provides, in relevant part, as follows:

#### Emission Limitations.

. . . Compliance with this Subpart must be demonstrated through the applicable coating analysis methods and procedures specified in Section 218.105(a) of this Part and the recordkeeping and reporting requirements specified in Section 218.211(c) of the Subpart except where noted . . . .

**ANSWER:** Since 35 Ill. Adm. Code 218.204 speaks for itself, no answer to Paragraph 29 is required.

30. Section 218.105(a) of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 218.105(a), provides, in relevant part, as follows:

#### Test Methods and Procedures.

##### (a) Coatings, Inks and Fountain Solutions

The following test methods and procedures shall be used to determine compliance of as applied coatings, inks, and fountain solutions with the limitations set forth in this Part.

- (1) Sampling: Samples collected for analyses shall be one-liter taken into a one-liter container at a location and time such that the sample will be representative of the coating as applied (i.e., the sample shall include any dilution solvent or other VOM added during the manufacturing process). The container must be tightly sealed immediately after the sample is taken. Any solvent or other VOM added after the sample is taken must be measured and accounted for in the calculations in subsection (a) (3) of this Section. For

multiple package coatings, separate samples of each component shall be obtained. A mixed sample shall not be obtained as it will cure in the container. Sampling procedure shall follow the guidelines presented in:

- (A) ASTM D3925-81 (1985) standard practice for sampling liquid paints and related pigment coating. This practice is incorporated by reference in Section 218.112 of this Part.
- (B) ASTM E300-86 standard practice for sampling industrial chemicals. This practice is incorporated by reference in Section 218.112 of this Part.

**ANSWER:** Since 35 Ill. Adm. Code 218.105(a) speaks for itself, no answer to Paragraph 30 is required.

31. Section 218.211(c) of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 218.211(c), provides, in relevant part, as follows:

Recordkeeping and Reporting.

\* \* \*

- (c) Any owner or operator of a coating line subject to the limitations of Section 218.204 of this Subpart other than Section 218.204(a) (2) or (a) (3) of this Subpart shall comply with the following:
  - (1) . . . upon initial start-up of a new coating line . . . the owner or operator of a subject coating line shall certify to the [Illinois EPA] that the coating line will be in compliance with section 218.204 of this Subpart on or after a date consistent with Section 218.106 of this Part, or on and after the initial start-up date. Such certification shall include:
    - (A) The name and identification number of each coating as applied on each coating line;
    - (B) The weight of VOM per volume of each coating (minus water and any compounds which are specifically exempted from the definition of VOM) as applied on each coating line; . . . .

**ANSWER:** Since 35 Ill. Adm. Code 218.211(c) speaks for itself, no answer to Paragraph 31 is required.

32. From on or after March 15, 1996, until September 18, 2003, when the Board granted Cromwell's Adjusted Standard request, Cromwell failed to demonstrate compliance through the applicable coating analysis methods and procedures specified in section 218.105(a) of the Board's Air Pollution Regulations and the recordkeeping and reporting requirements specified in Section 218.211(c) of the Board's Air Pollution Regulations.

**ANSWER:** Respondent denies the allegations set forth in Paragraph 32.

33. By failing to demonstrate compliance through the applicable coating analysis methods and procedures specified in Section 218.105(a) of the Board's Air Pollution Regulations and the recordkeeping and reporting requirements specified in Section 218.211(c) of the Board's Air Pollution Regulations from on or after March 15, 1996, until September 18, 2003, when the Board granted Cromwell's Adjusted Standard request, Cromwell violated Section 218.204 of the Board's Air Pollution Regulations.

**ANSWER:** Respondent denies the allegations set forth in Paragraph 33.

34. By violating Section 218.204 of the Board's Air Pollution Regulations, Cromwell violated Section 9(a) of the Act.

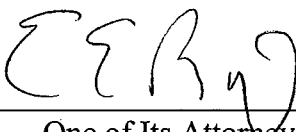
**ANSWER:** Respondent denies the allegations set forth in Paragraph 34.

**WHEREFORE,** Respondent, Cromwell-Phoenix, Inc., respectfully requests that the Board enter an order dismissing the Complaint with prejudice and order such further relief as appropriate and just.

**DATED: March 25, 2004**

Respectfully submitted,

CROMWELL-PHOENIX, INC.

By  \_\_\_\_\_  
One of Its Attorneys

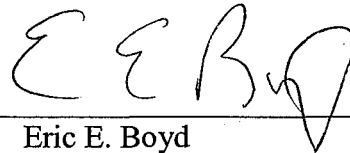
Eric E. Boyd  
SEYFARTH SHAW LLP  
55 East Monroe Street  
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Chicago, Illinois 60603  
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**CERTIFICATE OF SERVICE**

Eric E. Boyd, an attorney, certifies that he caused a true and correct copy of the foregoing  
RESPONDENT'S ANSWER TO COMPLAINANT'S COMPLAINT and APPEARANCE to be  
served by first class mail this 25th day of March 2004, upon:

Michael C. Partee  
Assistant Attorney General  
Environmental Bureau North  
188 West Randolph Street, Suite 2001  
Chicago, IL 60601

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

A handwritten signature in black ink, appearing to read "E E Boyd", written over a horizontal line.

Eric E. Boyd