

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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FEB 09 2005

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
 by LISA MADIGAN, Attorney)
 General of the State of Illinois,)
)
 Complainant,)
)
 v.)
)
 TRUSERV CORPORATION, a Delaware)
 corporation, d/b/a TRUE VALUE)
 MANUFACTURING COMPANY,)
)
)
 Respondent.)

PCB 05- 149
 (Enforcement - Air)

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on February 9, 2005, the People of the State of Illinois filed with the Illinois Pollution Control Board a Complaint, true and correct copies of which are attached and hereby served upon you.

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.

Respectfully submitted,

LISA MADIGAN
Attorney General
State of Illinois

BY: Joel J. Sternstein
 JOEL J. STERNSTEIN
 Assistant Attorney General
 Environmental Bureau
 188 W. Randolph St., 20th Floor
 Chicago, Illinois 60601
 (312) 814-6986

THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

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Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
by LISA MADIGAN, Attorney)
General of the State of Illinois,)
Complainant,)
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TRUSERV CORPORATION, a Delaware)
corporation, d/b/a TRUE VALUE)
MANUFACTURING COMPANY,)
Respondent.)

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COMPLAINT FOR CIVIL PENALTIES

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondent TRUSERV CORPORATION as follows:

COUNT I

FAILURE TO COVER MIXING AND THINNING TANKS

1. This Complaint is brought on behalf of the People ("Complainant") by the Attorney General on her own motion and upon the request of the Illinois Environmental Protection Agency ("Illinois EPA") pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(2002).

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

3. At all times relevant to this Complaint, TRUSERV CORPORATION ("Respondent") was and is an Delaware corporation registered to do business in Illinois.

4. At all times relevant to this Complaint, Respondent has operated a facility under the assumed name of True Value Manufacturing Company located at 823 West Blackhawk, Chicago, Cook County, Illinois, 60618 ("facility").

5. Respondent operates a paint manufacturing operation at the facility.

6. Emission sources at the facility include storage tanks, mixing tanks, holding tanks, grinding mills, and thinning operations.

7. The facility emits volatile organic material ("VOM") from the emission sources at its facility.

8. At all times relevant to the Complaint, Respondent's facility has been subject to Federally Enforceable State Operating Permit (FESOP) No. 95020117 issued by Illinois EPA. FESOP No. 95020117 was issued February 1, 2001 and expires on February 1, 2006.

9. Section 3.315 of the Act, 415 ILCS 5/3.315 (2002), provides the following definition:

"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, agent

or assigns.

10. Respondent is a "person" as the term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2002).

11. Section 3.165 of the Act, 415 ILCS 5/3.165 (2002), provides the following definition:

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

12. VOM is a contaminant, as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2002).

13. Section 3.115 of the Act, 415 ILCS 5/3.115 (2002), provides the following definition:

"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.

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

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 sources, so as to violate regulations or standards adopted by the Board under this Act;

15. Section 9(b) of the Act, 415 ILCS 5/9(b) (2002),

provides as follows:

No person shall:

* * *

Construct, install, or operate any equipment, facility, vehicle, vessel, or aircraft capable of causing or contributing to air pollution or designed to prevent air pollution of any type designated by Board regulations, without a permit granted by the Agency, or in violation of any conditions imposed by such permit.

16. Part 218 of the Illinois Pollution Control Board ("Board") Air Pollution Regulations regulates the emission of organics, including VOM, from facilities in the Chicago area. Subpart AA of Part 218 (35 Ill. Adm. Code 218.600 *et seq.*) applies specifically to paint and ink manufacturers.

17. Section 218.624 of Board Air Pollution Regulations, 35 Ill. Adm. Code 218.624, provides as follows:

. . . No person shall operate an open-top mill, tank, vat or vessel with a volume of more than 45 l (12 gal) for the production of paint or ink unless:

- (a) The mill, tank, vat or vessel is equipped with a cover which completely covers the mill, tank, vat or vessel opening except for an opening no larger than necessary to allow for safe clearance for a mixer shaft. Such cover shall extend at least 1.27 cm (0.5 in) beyond the outer rim of the opening or be attached to the rim.
- (b) The cover remains closed except when production, sampling, maintenance or inspection procedures require access.
- (c) The cover is maintained in good

condition such that, when in place, it maintains contact with the rim of the opening for at least 90 percent of the circumference of the rim.

18. Section 9 of Respondent's FESOP provides as follows:

. . . No person shall operate an open-top mill, tank, vat or vessel with a volume of more than 45 l (12 gal) for the production of paint or ink unless:

- (a) The mill, tank, vat or vessel is equipped with a cover which completely covers the mill, tank, vat or vessel opening except for an opening no larger than necessary to allow for safe clearance for a mixer shaft. Such cover shall extend at least 1.27 cm (0.5 in) beyond the outer rim of the opening or be attached to the rim.
- (b) The cover remains closed except when production, sampling, maintenance or inspection procedures require access.
- (c) The cover is maintained in good condition such that, when in place, it maintains contact with the rim of the opening for at least 90 percent of the circumference of the rim.

19. On July 22, 2003 and on other dates better known to Respondent, several paint storage tanks at the facility, with volumes of at least 45 liters (12 gallons), had bent lids, open lids, or missing lids which did not completely cover the paint storage tanks.

20. On July 22, 2003 and on other dates better known to Respondent, several paint thinning vessels at the facility had bent lids and were not making contact with 90 percent of the rim

of the vessel.

21. Respondent, by its conduct alleged herein, caused excess emissions of VOM into the environment.

22. Respondent, by its conduct alleged herein, violated Section 218.624 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.624, and thereby violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2002).

23. Respondent, by its conduct alleged herein, violated Section 9 of Respondent's FESOP, and thereby violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2002).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter a judgment in favor of Complainant and against Respondent, TRUSERV CORPORATION, on Count I:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;

2. Finding that Respondent has violated Section 218.624 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.624, Section 9(a) of the Act, 415 ILCS 5/9(a) (2002), Section 9 of Respondent's FESOP, and Section 9(b) of the Act, 415 ILCS 5/9(b) (2002);

3. Ordering Respondent to cease and desist from further violations of Section 218.624 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.624, Section 9(a) of the Act,

415 ILCS 5/9(a) (2002), Section 9 of Respondent's FESOP, and Section 9(b) of the Act, 415 ILCS 5/9(b) (2002);

4. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act, violation of pertinent Board Air Pollution Regulations, and violation of FESOP conditions, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Taxing all costs in this action pursuant to Section 42(f) of the Act, including attorney, expert witness and consultant fees, against Respondent; and

6. Granting such other relief as the Board deems appropriate and just.

COUNT II

FAILURE TO COVER GRINDING MILLS

1 - 17. Complainant realleges and incorporates by reference herein paragraphs 1 through 16 and paragraph 21 of Count I as paragraphs 1 through 17 of this Count II.

18. Section 218.625(a) and (b) of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 218.625(a) and (b), provides as follows:

- a) No person shall operate a grinding mill for the production of paint or ink which is not maintained in accordance with the manufacturer's specifications.
- b) No person shall operate a grinding mill fabricated or modified after the effective date of this Subpart which is

not equipped with fully enclosed screens.

19. Sections 10(a) and (b) of Respondent's FESOP provide as follows:

- a) No person shall operate a grinding mill for the production of paint or ink which is not maintained in accordance with the manufacturer's specifications.
- b) No person shall operate a grinding mill fabricated or modified after the effective date of this Subpart which is not equipped with fully enclosed screens.

20. On July 22, 2003 and on other dates better known to Respondent, several of the paint grinding mills at the facility had missing or damaged screens. The screens were not maintained in accordance with the manufacturer's specifications.

21. Respondent, by its conduct alleged herein, violated Section 218.625(a) and (b) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.625(a) and (b), and thereby violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2002).

22. Respondent, by its conduct alleged herein, violated Sections 10(a) and 10(b) of Respondent's FESOP, and thereby violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2002).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter a judgment in favor of Complainant and against Respondent, TRUSERV CORPORATION, on Count II:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent has violated Section 218.625(a) and (b) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.625(a) and (b), Section 9(a) of the Act, 415 ILCS 5/9(a) (2002), Sections 10(a) and 10(b) of Respondent's FESOP, and Section 9(b) of the Act, 415 ILCS 5/9(b) (2002);
3. Ordering Respondent to cease and desist from further violations of Section 218.625(a) and (b) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.625(a) and (b), Section 9(a) of the Act, 415 ILCS 5/9(a) (2002), Sections 10(a) and 10(b) of Respondent's FESOP, and Section 9(b) of the Act, 415 ILCS 5/9(b) (2002);
4. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act, violation of pertinent Board Air Pollution Regulations, and violation of FESOP conditions, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Taxing all costs in this action pursuant to Section 42(f) of the Act, including attorney, expert witness and consultant fees, against Respondent; and
6. Granting such other relief as the Board deems appropriate and just.

COUNT III

FAILURE TO MAINTAIN RECORDS ABOUT LEAKS AND
FAILURE TO REPAIR LEAKS WITHIN 15 DAYS

1 - 17. Complainant realleges and incorporates by reference herein paragraphs 1 through 16 and paragraph 21 of Count I as paragraphs 1 through 17 of this Count III.

18. Section 218.628 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 218.628, provides as follows:

The owner or operator of a paint or ink manufacturing source shall, for the purpose of detecting leaks, conduct an equipment monitoring program as set forth below:

- a) Each pump shall be checked by visual inspection each calendar week for indications of leaks, that is, liquids dripping from the pump seal. If there indications of liquids dripping from the pump seal, the pump shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected.
- b) Any pump, valve, pressure relief valve, sampling connection, open-ended valve and flange or connector containing a fluid which is at least 10 percent VOM by weight which appears to be leaking on the basis of sight, smell or sound shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected.
- c) A weather proof, readily visible tag, in bright colors such as red or yellow, bearing an identification number and the date on which the leak was detected shall be attached to leaking equipment. The tag may be removed upon repair, that is, when the equipment is adjusted or otherwise altered to allow operation

without leaking.

- d) When a leak is detected, the owner or operator shall record the date of detection and repair and the record shall be retained at the source for at least two years from the date of each detection or each repair attempt. The record shall be made available to any person upon verbal or written request during business hours.

19. Section 12 of Respondent's FESOP provides as follows:

The owner or operator of a paint or ink manufacturing source shall, for the purpose of detecting leaks, conduct an equipment monitoring program as set forth below:

- a) Each pump shall be checked by visual inspection each calendar week for indications of leaks, that is, liquids dripping from the pump seal. If there indications of liquids dripping from the pump seal, the pump shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected.
- b) Any pump, valve, pressure relief valve, sampling connection, open-ended valve and flange or connector containing a fluid which is at least 10 percent VOM by weight which appears to be leaking on the basis of sight, smell or sound shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected.
- c) A weather proof, readily visible tag, in bright colors such as red or yellow, bearing an identification number and the date on which the leak was detected shall be attached to leaking equipment. The tag may be removed upon repair, that is, when the equipment is adjusted or otherwise altered to allow operation without leaking.

- d) When a leak is detected, the owner or operator shall record the date of detection and repair and the record shall be retained at the source for at least two years from the date of each detection or each repair attempt. The record shall be made available to any person upon verbal or written request during business hours.

20. On July 22, 2003 and on other dates better known to Respondent, records indicating the date of detection and repair of leaks at the facility were not retained at Respondent's facility and thus not made available for inspection upon request.

21. Records that Respondent provided to Illinois EPA after July 22, 2003 indicating the date of detection and repair of leaks at the facility failed to show that all of the leaks had been repaired within 15 days of detection.

22. Respondent, by its conduct alleged herein, violated Section 218.628 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.628, and thereby violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2002).

23. Respondent, by its conduct alleged herein, violated Section 12 of Respondent's FESOP, and thereby violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2002).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter a judgment in favor of Complainant and against Respondent, TRUSERV CORPORATION, on Count III:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent has violated Section 218.628 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.628, Section 9(a) of the Act, 415 ILCS 5/9(a) (2002), Section 12 of Respondent's FESOP, and Section 9(b) of the Act, 415 ILCS 5/9(b) (2002);
3. Ordering Respondent to cease and desist from further violations of Section 218.628 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.628, Section 9(a) of the Act, 415 ILCS 5/9(a) (2002), Section 12 of Respondent's FESOP, and Section 9(b) of the Act, 415 ILCS 5/9(b) (2002);
4. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act, violation of pertinent Board Air Pollution Regulations, and violation of FESOP conditions, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Taxing all costs in this action pursuant to Section 42(f) of the Act, including attorney, expert witness and consultant fees, against Respondent; and
6. Granting such other relief as the Board deems appropriate and just.

COUNT IV

FAILURE TO PROPERLY COVER OR ENCLOSE EQUIPMENT
DURING CLEANING

1 - 17. Complainant realleges and incorporates by reference herein paragraphs 1 through 16 and paragraph 21 of Count I as paragraphs 1 through 17 of this Count IV.

18. Section 218.630(a) of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 218.630(a), provides as follows:

- (a) No person shall clean paint or ink manufacturing equipment with organic solvent unless the equipment being cleaned is completely covered or enclosed except for an opening no larger than necessary to allow safe clearance for proper orientation of the cleaning equipment, considering the method and materials used.

19. Section 13(a) of Respondent's FESOP provides as follows:

- (a) No person shall clean paint or ink manufacturing equipment with organic solvent unless the equipment being cleaned is completely covered or enclosed except for an opening no larger than necessary to allow safe clearance for proper orientation of the cleaning equipment, considering the method and materials used.

20. On July 22, 2003 and on other dates better known to Respondent, Respondent's employees were cleaning mixing tanks at the facility with organic solvent but failed to cover or enclose the mixing tanks

21. Respondent, by its conduct alleged herein, violated

Section 218.630(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.630(a), and thereby violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2002).

22. Respondent, by its conduct alleged herein, violated Section 13(a) of Respondent's FESOP, and thereby violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2002).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter a judgment in favor of Complainant and against Respondent, TRUSERV CORPORATION, on Count IV:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent has violated Section 218.630(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.630(a), Section 9(a) of the Act, 415 ILCS 5/9(a) (2002), Section 13(a) of Respondent's FESOP, and Section 9(b) of the Act, 415 ILCS 5/9(b) (2002);
3. Ordering Respondent to cease and desist from further violations of Section 218.630(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.630(a), Section 9(a) of the Act, 415 ILCS 5/9(a) (2002), Section 13(a) of Respondent's FESOP, and Section 9(b) of the Act, 415 ILCS 5/9(b) (2002);
4. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act,

violation of pertinent Board Air Pollution Regulations, and violation of FESOP conditions, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Taxing all costs in this action pursuant to Section 42(f) of the Act, including attorney, expert witness and consultant fees, against Respondent; and

6. Granting such other relief as the Board deems appropriate and just.

COUNT V

FAILURE TO SUBMIT ACCURATE ANNUAL EMISSIONS REPORT

1. - 15. Complainant realleges and incorporates by reference herein paragraphs 1 through 14 and paragraph 21 of Count I as paragraphs 1 through 15 of this Count V.

16. Section 201.102 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.102, provides the following definition:

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

17. The storage tanks, mixing tanks, holding tanks, grinding mills, and thinning operations are all emissions sources (or emissions units) as that term is defined in the Board Air Pollution Regulations.

18. Section 201.302(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.302(a), provides as follows:

The owner or operator of any emission unit or air pollution control equipment, unless

specifically exempted in this Section, shall submit to the Agency as a minimum, annual reports detailing the nature, specific emission units and total quantities of all specified air contaminant emissions; provided, however, that the Agency may require more frequent reports where necessary to accomplish the purposes of the Act and this Chapter.

19. The Respondent's emissions sources are not exempt from the requirement to file Annual Emissions Reports per Section 201.302(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.302(a).

20. Section 254.132(a) of the Illinois EPA's Air Pollution Regulations, 35 Ill. Adm. Code 254.132(a), provides as follows:

Failure to file a complete Annual Emissions Report by the applicable deadlines described in Subparts B, C, and D of this Part shall be a violation of 35 Ill. Adm. Code 201.302(a).

21. Pursuant to Section 254.302 of the Illinois EPA's Air Pollution Regulations, 35 Ill. Adm. Code 254.302, the deadline to submit Annual Emissions Reports ("AERs") for VOM sources in the Chicago Ozone Nonattainment Area is May 1 of the subsequent year.

22. As of the date of the filing of this complaint, Respondent has failed to file a complete and accurate AER for at least calendar year 2002.

23. The AER that Respondent submitted to Illinois EPA for calendar year 2002 failed to accurately reflect Respondent's VOM emissions from its facility.

24. Respondent, by its conduct alleged herein, violated

Section 201.302(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.302(a), and thereby violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2002).

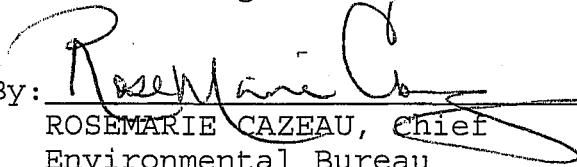
WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter a judgment in favor of Complainant and against Respondent, TRUSERV CORPORATION, on Count V:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent has violated Section 201.302(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.302(a), and Section 9(a) of the Act, 415 ILCS 5/9(a) (2002);
3. Ordering Respondent to cease and desist from further violations of Section 201.302(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.302(a), and Section 9(a) of the Act, 415 ILCS 5/9(a) (2002);
4. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and violation of pertinent Board Air Pollution Regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Taxing all costs in this action pursuant to Section 42(f) of the Act, including attorney, expert witness and consultant fees, against Respondent; and

6. Granting such other relief as the Board deems appropriate and just.

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

By: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

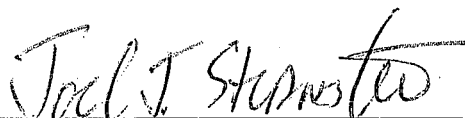
Of Counsel:

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(312) 814-6986

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CERTIFICATE OF SERVICE

I, JOEL J. STERNSTEIN, an Assistant Attorney General, certify that on the 9th Day of February 2005, I caused to be served by Certified Mail (Respondent's Counsel) and by First Class Mail (Illinois EPA Counsel) the foregoing Complaint to the parties named on the attached service list, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.



JOEL J. STERNSTEIN