

ILLINOIS POLLUTION CONTROL BOARD  
September 19, 2002

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| PEOPLE OF THE STATE OF ILLINOIS, | ) |                      |
|                                  | ) |                      |
| Complainant,                     | ) |                      |
|                                  | ) |                      |
| v.                               | ) | PCB 97-66            |
|                                  | ) | (Enforcement - Land) |
| D'ANGELO ENTERPRISES, INC., an   | ) |                      |
| Illinois corporation,            | ) |                      |
|                                  | ) |                      |
| Respondent.                      | ) |                      |

INTERIM OPINION AND ORDER OF THE BOARD (by C.A. Manning):

D'Angelo Enterprises, Inc. (D'Angelo) manufactures circuit boards and other electroplated products in Franklin Park, Cook County. In an 11-count complaint filed in 1996, the People of the State of Illinois (People) allege that D'Angelo violated provisions of the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (2000)) and Board regulations on handling and disposing hazardous waste and special waste. Each count of the complaint alleges multiple violations. The People ask the Board to order D'Angelo to cease and desist from further violations, to pay a civil penalty, and to pay the People's costs and attorney fees.

In 1998 and 1999, the Board ruled on counter-motions for summary judgment in this case, finding that D'Angelo violated 22 provisions of the Act and Board regulations, but that D'Angelo did not commit other alleged violations. In violating these provisions, D'Angelo mishandled a number of hazardous waste streams. The Board also found that D'Angelo should pay a civil penalty, but the Board did not set a dollar amount because additional alleged violations remained for hearing. After these rulings, the following were left to be decided: (1) the remaining alleged violations of hazardous waste and special waste requirements; (2) the appropriate remedy for *all* violations, including the amount of the civil penalty; and (3) the People's request for costs and attorney fees. All of these outstanding issues are addressed in the People's second motion for summary judgment, which the Board rules on today. D'Angelo did not respond to the People's motion.

For the reasons below, the Board finds that there are no genuine issues of material fact and that the People are entitled to judgment as a matter of law on the outstanding issues. The Board therefore grants the People's second motion for summary judgment. The Board finds that D'Angelo committed the remaining alleged violations of the Act and Board regulations and must cease and desist from any further violations. The Board also finds that D'Angelo must pay a civil penalty of \$70,000 for violating the hazardous waste and special waste provisions of the Act at 415 ILCS 5/21(f)(1) and (f)(2) (2000), *amended by* P.A. 92-0574, eff. June 26, 2002, and the Board's regulations at 35 Ill. Adm. Code 703.121(a) and (b), 722.111, 725.116 (a) and (d), 725.135, 725.137, 725.151, 725.155, 725.274, 728.107(a), 728.150(a)(1), and 809.301.

Most of these statutory and regulatory provisions implement Subtitle C of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. §§ 6921 *et seq.* (2000)) in Illinois. RCRA is the federal law created to protect human health and the environment from the dangers of hazardous waste. RCRA requires accounting for the waste from “cradle-to-grave,” that is, from waste generation to proper disposal. In this case, D’Angelo stored over 3,000 gallons of hazardous waste without a RCRA permit. D’Angelo also failed to meet basic requirements for hazardous waste safety training, inspections, and emergency precautions. Many violations lasted for at least three years. In addition, because D’Angelo violated some of these requirements knowingly and repeatedly, the Board will order D’Angelo to pay the People’s costs and attorney fees. The order below directs the People to file an affidavit of its costs and attorney fees, after which the Board will issue a final order.

In this interim opinion, the Board addresses the following subjects in order: procedural matters; applicable law; facts; remaining alleged violations; remedy; and costs and attorney fees.

## **PROCEDURAL MATTERS**

### **Procedural History**

#### **Complaint**

The People filed an 11-count complaint against D’Angelo on October 3, 1996.<sup>1</sup> The complaint alleges that D’Angelo violated the following provisions of the Act and the Board’s regulations:

- Count I—Sections 21(f)(1) and (f)(2) of the Act and 35 Ill. Adm. Code 703.121(a) and (b), 721.121(b), 721.124(a) and (b), 721.131(a), and 728.150(a)(1) and (c) by storing hazardous waste without a RCRA permit;
- Count II—Section 21(f)(2) of the Act and 35 Ill. Adm. Code 722.111 by failing to determine if solid waste is hazardous waste;
- Count III—Section 21(f)(2) of the Act and 35 Ill. Adm. Code 728.107(a) by failing to determine whether solid waste is restricted from land disposal;
- Count IV—Section 21(f)(2) of the Act and 35 Ill. Adm. Code 722.140(b) and 722.141(a) by failing to submit and retain annual hazardous waste reports;
- Count V—Section 21(f)(2) of the Act and 35 Ill. Adm. Code 725.116(a) and (d) by not having the requisite hazardous waste training program for D’Angelo employees;

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<sup>1</sup> The Board cites the complaint as “Comp. at \_.”

- Count VI—Section 21(f)(2) of the Act and 35 Ill. Adm. Code 725.135 by failing to maintain adequate aisle space at the facility to allow emergency equipment and personnel to pass unobstructed;
- Count VII—Section 21(f)(2) of the Act and 35 Ill. Adm. Code 725.137 by failing to arrange emergency procedures with local authorities;
- Count VIII—Section 21(f)(2) of the Act and 35 Ill. Adm. Code 725.151 by failing to maintain a contingency plan for hazardous waste emergencies;
- Count IX—Section 21(f)(2) of the Act and 35 Ill. Adm. Code 725.155 by failing to appoint an emergency coordinator;
- Count X—Section 21(f)(2) of the Act and 35 Ill. Adm. Code 725.274 by failing to inspect the hazardous waste container storage areas weekly for leaks or deterioration; and
- Count XI—Section 21(e) of the Act (415 ILCS 5/21(e) (2000), *amended by* P.A. 92-0574, eff. June 26, 2002) and 35 Ill. Adm. Code 809.301 by disposing special waste without the requisite manifests.

### **Board Orders of November 1998 and January 1999**

The Board has issued two orders in this case. In the first order, issued on November 19, 1998, the Board granted in part and denied in part the People's August 5, 1998 motion for summary judgment. The People's motion sought findings of violation, but not a remedy, costs, or attorney fees. In ruling on the motion, the Board found that D'Angelo violated 22 provisions of the Act and regulations, as alleged in part of counts I, II, and III and all of counts V, VI, VII, VIII, IX, and X. Generally, the Board found that D'Angelo committed the violations by storing hazardous wastes without a RCRA permit for at least three years, by not meeting recordkeeping and filing requirements, by not training personnel in hazardous waste management procedures, and by not adopting a contingency plan to minimize health and environmental hazards in case of a fire, explosion, or hazardous waste release. *See People v. D'Angelo Enterprises, Inc.*, PCB 97-66, slip op. at 18-19 (Nov. 19, 1998).

In the same order, the Board granted in part and denied in part D'Angelo's September 9, 1998 counter-motion for summary judgment. D'Angelo sought summary judgment on all counts and on the issue of civil penalty. In ruling on D'Angelo's counter-motion for summary judgment, the Board found that D'Angelo did not violate some of the provisions alleged in count I and did not violate any of the provisions alleged in count IV. However, because some alleged violations could not be resolved based on the parties' summary judgment pleadings, the Board found that it was premature to consider the issue of civil penalty. As to the violations found, the Board granted the People time to respond to the merits of D'Angelo's counter-motion for summary judgment on penalties. *See D'Angelo*, PCB 97-66, slip op. at 17-19 (Nov. 19, 1998). After receiving the People's response, the Board took up the issue of civil penalties in its second order.

In the second order, issued on January 7, 1999, the Board denied the part of D'Angelo's counter-motion for summary judgment on civil penalties. D'Angelo sought a Board ruling that no penalty is appropriate or, alternatively, that any penalty assessed should be minor. The Board found that a civil penalty is appropriate in this case, but declined to set a dollar amount at that time because additional alleged violations remained unresolved. See People v. D'Angelo Enterprises, Inc., PCB 97-66, slip op. at 3-5 (Jan. 7, 1999).

### **People's Second Motion for Summary Judgment and Motion to Dismiss**

Since the Board's January 1999 order, the parties have pursued settlement, declining to go to hearing on the remaining issues. The parties, of course, ultimately did not settle. Instead, on May 17, 2002, the People filed a second motion for summary judgment, which is the primary subject of today's decision. The People's filing includes a motion to dismiss part of count XI.<sup>2</sup> D'Angelo did not respond to either of these motions of the People.

In the second motion for summary judgment, the People explain that counts I and III of the complaint alleged not that D'Angelo's paint filters and pretreatment filters were *hazardous* waste, but rather that they were *special* waste. 2d Mot. S. J. at 5-6, 8, 11, 18. Counts I and III allege only violations of *hazardous* waste provisions, not *special* waste provisions. Because the complaint, as clarified, does not allege that D'Angelo's disposal of paint filters and pretreatment filters violated the *hazardous* waste provisions identified in counts I and III, there is no question of such liability now for the Board to decide.

As noted, the People also move the Board to dismiss part of count XI, specifically, the alleged violation of Section 21(e) of the Act "regarding D'Angelo's disposal of paint and pretreatment filters." 2d Mot. S.J. at 11. The Board grants the People's motion to dismiss.

### **Remaining Alleged Violations**

With this ruling on the motion to dismiss and the People's clarification of counts I and III, the Board today addresses the remaining alleged violations, which are:

- Count I—D'Angelo violated Sections 21(f)(1) and (f)(2) of the Act and 35 Ill. Adm. Code 703.121(a) and (b), and 728.150(a)(1) and (c) by storing hazardous waste (paint/ink solvents) without a RCRA permit;
- Count II—D'Angelo violated Section 21(f)(2) of the Act and 35 Ill. Adm. Code 722.111 by failing to determine if solid waste (paint/ink solvents) is hazardous waste; and
- Count XI—D'Angelo violated 35 Ill. Adm. Code 809.301 by disposing special waste (paint filters and pretreatment filters) without the requisite manifests.

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<sup>2</sup> The Board cites the People's second motion for summary judgment as "2d Mot. S.J. at \_."

## **APPLICABLE LAW**

### **Summary Judgment**

Summary judgment is appropriate when the pleadings, depositions, admissions, affidavits, and other items in the record, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Dowd & Dowd, Ltd. v. Gleason, 181 Ill. 2d 460, 483, 693 N.E.2d 358, 370 (1998); *see also* 35 Ill. Adm. Code 101.516(b). When ruling on a motion for summary judgment, the Board “must consider the pleadings, depositions, and affidavits strictly against the movant and in favor of the opposing party.” Dowd, 181 Ill. 2d at 483, 693 N.E.2d at 370.

Summary judgment “is a drastic means of disposing of litigation,” and therefore the Board should grant it only when the movant’s right to the relief “is clear and free from doubt.” Dowd, 181 Ill. 2d at 483, 693 N.E.2d at 370, citing Putrill v. Hess, 111 Ill. 2d 229, 240, 489 N.E.2d 867, 871 (1986). “Even so, while the nonmoving party in a summary judgment motion is not required to prove [its] case, [it] must nonetheless present a factual basis, which would arguably entitle [it] to a judgment.” Gauthier v. Westfall, 266 Ill. App. 3d 213, 219, 639 N.E.2d 994, 999 (2d Dist. 1994).

### **Remaining Provisions Allegedly Violated**

#### **Storing Hazardous Waste**

Sections 21(f)(1) and (f)(2) of the Act provide:

No person shall:

- f) Conduct any hazardous waste-storage, hazardous waste-treatment or hazardous waste-disposal operation:
  - (1) without a RCRA permit for the site issued by the [Illinois Environmental Protection] Agency under subsection (d) of Section 39 of this Act, or in violation of any condition imposed by such permit, including periodic reports and full access to adequate records and the inspection of facilities, as may be necessary to assure compliance with this Act and with regulations and standards adopted thereunder; or
  - (2) in violation of any regulations or standards adopted by the Board under this Act. 415 ILCS 5/21(f)(1) and (f)(2) (2000), *amended by* P.A. 92-0574, eff. June 26, 2002.

Sections 703.121(a) and (b) of the Board’s RCRA permit program provide:

- a) No person shall conduct any hazardous waste storage, hazardous waste treatment or hazardous waste disposal operation:
  - 1) Without a RCRA permit for the HWM (hazardous waste management) facility . . . .
- b) Owners and operators of HWM units shall have permits during the active life (including the closure period) of the unit. . . . 35 Ill. Adm. Code 703.121(a), (b).

Section 728.150(a)(1) of the Board's land disposal restrictions prohibits "the storage of hazardous wastes restricted from land disposal" unless the waste generator is properly "accumulating" the wastes for limited time periods. 35 Ill. Adm. Code 728.150(a)(1).

### **Determining if Solid Waste is Hazardous Waste**

Section 722.111 of the Board's standards for hazardous waste generators requires a generator of solid waste to determine, through specified methods, if that waste is hazardous waste. *See* 35 Ill. Adm. Code 722.111. Solid waste is considered hazardous if it has a specified "characteristic" (ignitable, reactive, corrosive, or toxic) or if it is "listed" as a hazardous waste. *See* 35 Ill. Adm. Code 721.

### **Manifesting Special Waste for Disposal**

Section 809.301 of the Board's regulations for special waste hauling provides:

No person shall deliver any special waste generated within Illinois or for disposal, storage or treatment within Illinois unless that person concurrently delivers a manifest completed in accordance with Subpart E of this Part to a special waste hauler who holds a current, valid special waste hauling permit issued by the [Illinois Environmental Protection] Agency under Subpart B of this Part. 35 Ill. Adm. Code 809.301.

### **The Act's Remedy Provisions**

When deciding upon the appropriate remedy for violations of the Act and Board regulations, the Board considers the factors set forth in Section 33(c) of the Act:

- (c) In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:
  - (i) the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;

- (ii) the social and economic value of the pollution source;
- (iii) the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
- (iv) the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
- (v) any subsequent compliance. 415 ILCS 5/33(c) (2000).

Section 42 of the Act provides civil penalties for violations of the Act and Board regulations:

- (a) Except as provided in this Section, any person that violates any provision of this Act or any regulation adopted by the Board . . . shall be liable to a civil penalty of not to exceed \$50,000 for the violation and an additional civil penalty of not to exceed \$10,000 for each day during which the violation continues . . . .
- (b) Notwithstanding the provisions of subsection (a) of this Section:
  - \* \* \*
  - 3. Any person that violates Sections 21(f), 21(g), 21(h) or 21(i) of this Act . . . or any filing requirement, regulation or order relating to the State RCRA program, shall be liable to a civil penalty of not to exceed \$25,000 per day of violation. 415 ILCS 5/42(a), (b)(3) (2000).

The Board considers the factors set forth in Section 42(h) of the Act when determining an appropriate civil penalty:

- (h) In determining the appropriate civil penalty to be imposed under subdivisions (a), (b)(1), (b)(2), (b)(3), or (b)(5) of this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:
  - (1) the duration and gravity of the violation;
  - (2) the presence or absence of due diligence on the part of the violator in attempting to comply with the requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;

- (3) any economic benefits accrued by the violator because of delay in compliance with requirements;
- (4) the amount of monetary penalty which will serve to deter further violations by the violator and to otherwise aid in enhancing voluntary compliance with this Act by the violator and other persons similarly subject to the Act; and
- (5) the number, proximity in time, and gravity of previously adjudicated violations of this Act by the violator. 415 ILCS 5/42(h) (2000).

### **Section 42(f) on Costs and Attorney Fees**

Section 42(f) of the Act provides that the Board may award costs and reasonable attorney fees to the Attorney General when a respondent “has committed a willful, knowing or repeated violation of the Act.” 415 ILCS 5/42(f) (2000).

### **FACTS**

D’Angelo is an Illinois corporation with a facility at 9955 Pacific Avenue, Franklin Park, Cook County. D’Angelo manufactures printed circuit boards and other products that are electroplated.<sup>3</sup> Ans. at 2; Resp. at 3. As of 1998, D’Angelo employed 45 people, had a payroll of approximately \$1.9 million, and had sales of approximately \$2.8 million. Resp. at 11. D’Angelo submitted a notification of hazardous waste activity and obtained a RCRA hazardous waste generator identification number in October 1981. *Id.* at 3.

D’Angelo operates the following processes at its facility: anodizing; chromating; copper and solder electroplating; spray-painting; silk-screening; and etching. Ans. at 2. These processes generate waste materials, including: paint/ink solvents; plating sludge; bifluoride waste; paint filters; and pretreatment filters. Resp., Exh. A (Agency RCRA Inspection Report).

On November 19, 1993, and on June 7, 1994, Gino Bruni (Bruni) and Anna Van Orden (Van Orden), each an environmental protection specialist with the Illinois Environmental Protection Agency (Agency), inspected the facility.<sup>4</sup> Bruni and Van Orden interviewed Wally

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<sup>3</sup> The Board cites D’Angelo’s admissions in its March 28, 1997 answer as “Ans. at \_.” The Board cites D’Angelo’s September 9, 1998 response to the People’s first motion for summary judgment as “Resp. at \_.” Facts provided in the response are supported by the affidavits of James Post, President of D’Angelo, and Wally Schwetz, foreman of D’Angelo’s facility. The Board cites documents from the records of the Agency’s Bureau of Land, which are exhibits to D’Angelo’s response, as “Resp., Exh. \_.” Mark Steger, then counsel for D’Angelo, provides an affidavit as to the copies of the Agency’s records being true and correct. The Post, Schwetz, and Steger affidavits are attached to D’Angelo’s response.

<sup>4</sup> The *initial* affidavits of Agency inspectors Bruni and Van Orden (attached to the People’s first motion for summary judgment) are substantively identical to each other. The *supplemental*



Schwetz, foreman of the facility. Agency Affid. at 1-3. Fifty-five 55-gallon drums of plating sludge and three 55-gallon drums of bifluoride waste were on-site, and had been collecting these materials since at least 1990. D'Angelo also had on-site three 55-gallon drums of paint/ink solvents at the time of the November 1993 inspection. *Id.*; Resp. at 3.

The drums were "scattered throughout the facility." Resp., Exh. A (Agency RCRA Inspection Report). The three paint/ink solvent drums were located in the "chemical room with the chemical products." *Id.* No drums were labeled. Agency Affid. at 3. During the November 1993 inspection, at least some drums that were not being used were open. *Id.* at 7.

D'Angelo generated a single 55-gallon drum of paint/ink solvents quarterly. Agency Supp. Affid. at 1. The three 55-gallon drums of paint/ink solvents had collected these materials for more than 270 days. The facility did not have a waste manifest for the disposal of paint/ink solvents for the 270 days preceding November 19, 1993. *Id.*

D'Angelo determined, on October 5, 1993, that the paint/ink/solvents consisted of hazardous wastes. As indicated above, under Board regulations, hazardous wastes are given a number based on whether they have characteristics of ignitability, toxicity, corrosivity, or reactivity ("characteristic wastes") or are specifically named on regulatory lists ("listed wastes"). D'Angelo determined that the paint/ink solvents consisted of hazardous wastes designated D001 (ignitable), D035 (toxic for methyl ethyl ketone), F003 (certain spent non-halogenated solvents), and F005 (certain spent non-halogenated solvents). Resp., Exh. A (Agency RCRA Inspection Report) (10/5/93 was the "Date of Last Analysis" for paint/ink/solvents); 35 Ill Adm. Code 721.Subpart C. D'Angelo analyzed the plating sludge on December 14, 1993, and determined that it was F006 hazardous waste (wastewater treatment sludges from electroplating operations). Resp., Exh. A (Agency RCRA Inspection Report) (12/14/93 was the "Date of Last Analysis" for plating sludge); 35 Ill Adm. Code 721.Subpart C.

D'Angelo does not contest that the bifluoride waste, as well as the paint/ink solvents and plating sludge, were hazardous wastes, or that copies of D'Angelo's disposal manifests identify the wastes as hazardous wastes. Resp., Exh. A (Agency Inspection Report), Exh. L; Agency Affid. at 3. The record contains no evidence of when D'Angelo first determined that these wastes were hazardous wastes. D'Angelo does not have a RCRA permit to store hazardous wastes. Agency Affid. at 3.

On December 21, 1993, D'Angelo disposed the bifluoride waste and plating sludge off-site. Resp. at 5, Exh. L. The disposal manifest for these wastes described them in part as "hazardous waste solid" and "F019," the latter being a hazardous waste designation: wastewater treatment sludges from the chemical conversion coating of aluminum. *Id.*; 35 Ill. Adm. Code 721.131. On January 21, 1994, D'Angelo disposed the paint/ink solvents off-site. The disposal

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affidavits of Bruni and Van Orden (attached to the People's second motion for summary judgment) are also substantively identical to each other. Accordingly, the Board simply cites to the initial affidavits as "Agency Affid. at \_" and the supplemental affidavits as "Agency Supp. Affid. at \_."

manifest for these wastes described them in part as “waste flammable liquids . . . (toluene & xylene) . . . (F005).” *Id.* F005 wastes, as noted, are certain spent non-halogenated solvents. *See* 35 Ill. Adm. Code 721.131(a).

D’Angelo did not provide sufficient aisle space to allow Agency personnel to inspect the containers of waste or to allow for the unobstructed movement of emergency equipment and personnel. Agency Affid. at 4. D’Angelo did not have weekly inspection reports or any other documents on-site indicating that D’Angelo had inspected the container storage areas. *Id.*

D’Angelo did not provide hazardous waste management training for personnel or maintain records identifying personnel involved in hazardous waste management by title, position, description of job duties, or compliance training. Agency Affid. at 3. D’Angelo did not have a contingency plan for emergency situations or an emergency coordinator. In addition, D’Angelo did not make arrangements with or notify the local fire, police, hospital, or emergency response teams that would respond to hazardous waste emergencies at the facility. *Id.* at 4.

The facility also had paint filters and pretreatment filters. Agency Affid. at 2-3. D’Angelo placed an indeterminable amount of paint filters and pretreatment filters in an on-site dumpster, the contents of which D’Angelo disposed in a solid waste landfill. *Id.* at 3. On November 19, 1993, D’Angelo had no documentation showing that it concurrently delivered special waste manifests to a licensed special waste transporter when disposing the filters. Agency Supp. Affid. at 2.

On June 23, 1994, the Agency issued a letter to D’Angelo following the June 7, 1994 follow-up inspection of the facility. The letter states that the Agency determined that D’Angelo had “returned to compliance” with most of the provisions allegedly violated, but that several alleged violations remained, which D’Angelo was given 30 days to resolve. Resp., Exh. G. On August 18, 1994, the Agency issued a letter to D’Angelo stating that the Agency determined that D’Angelo had “returned to compliance” with the provisions identified as unresolved in the July 23, 1994 letter. Resp., Exh. I.

## **LEGAL ISSUES AND ANALYSIS**

There are three legal issues for the Board to address. Below the Board decides whether summary judgment is appropriate (1) for each of the *remaining* alleged violations, (2) as to the remedy (including civil penalty) for all violations found, both previously and today, and (3) as to the People’s request for attorney fees and costs. Because D’Angelo did not respond to the People’s second motion for summary judgment, D’Angelo waives any objection to the Board granting the motion. This waiver, however, does not bind the Board in ruling on the motion. *See* 35 Ill. Adm. Code 101.500(d).

### **Remaining Alleged Violations**

The remaining alleged violations are of three types: (1) storing hazardous waste without a RCRA permit; (2) failing to determine if waste generated is hazardous waste; and (3) disposing special waste without providing a manifest.

### **Storing Hazardous Waste**

In the unresolved portion of count I, the People allege that D'Angelo violated Sections 21(f)(1) and (f)(2) of the Act and 35 Ill. Adm. Code 703.121(a) and (b) and 728.150(a)(1) by storing hazardous waste (paint/ink solvents) without a RCRA permit. Comp. at 1–19. A “RCRA permit” is “a permit issued by the Agency pursuant to authorization received by the Agency from the United States Environmental Protection Agency under Subtitle C of the Resource Conservation and Recovery Act of 1976, (P.L. 94-580) (RCRA) and which meets the requirements of Section 3005 of RCRA and of this Act.” 415 ILCS 5/3.29 (2000), *amended by* P.A. 92-0574, eff. June 26, 2002 (renumbered as Section 3.370). Generally, anyone “storing” hazardous waste is required to obtain a RCRA permit. *See* 415 ILCS 5/21(f)(1) (2000), *amended by* P.A. 92-0574, eff. June 26, 2002; 35 Ill. Adm. Code 703.121.

The Board has already found that the paint/ink solvents were hazardous waste and that D'Angelo was the “generator”<sup>5</sup> of the waste. The Board also found that D'Angelo “stored” at least some hazardous waste without a RCRA permit. “Storage” is “the containment of waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal.” 415 ILCS 5/3.46 (2000), *amended by* P.A. 92-0574, eff. June 26, 2002 (renumbered as Section 3.480); *see also* 35 Ill. Adm. Code 702.110 (definition of “storage”).

In its November 1998 order, the Board found that D'Angelo's paint/ink solvents might not have been on-site for more than 90 days. Under Sections 703.123(a) and 722.134 of the Board's regulations (35 Ill. Adm. Code 703.123(a), 722.134), generators who “accumulate” waste on-site for 90 days or less are not required to obtain a RCRA permit. Accordingly, the Board found that D'Angelo might have been “accumulating” that waste rather than “storing” it. *See D'Angelo*, PCB 97-66, slip op. at 5 (Nov. 19, 1998).

The People now attach to the second motion for summary judgment supplemental affidavits of Agency inspectors Bruni and Van Orden. As found above, the facility had three 55-gallon drums of paint/ink solvents as of the November 19, 1993 inspection. As further found above and based on the supplemental affidavits, the facility generated one 55-gallon drum of paint/ink solvents each quarter and the facility did not have a waste manifest for the disposal of paint/ink solvents for the 270 days preceding November 19, 1993.

The Board finds that there is no genuine issue of material fact that paint/ink solvents were being held on-site for longer than any accumulation time period. D'Angelo has presented no evidence to the contrary. Therefore, as a matter of law, D'Angelo was storing hazardous waste without a RCRA permit. The Board grants the People's motion for summary judgment on the claim that D'Angelo violated Sections 21(f)(1) and (f)(2) of the Act and 35 Ill. Adm. Code 703.121(a) and (b) and 728.150(a)(1) by storing paint/ink solvents, which were hazardous waste, without a RCRA permit.

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<sup>5</sup> The Act defines “generator” and “hazardous waste.” *See* 415 ILCS 5/3.12, 3.15 (2000), *amended by* P.A. 92-0574, eff. June 26, 2002 (renumbered as Sections 3.205 and 3.220); *see also* 35 Ill. Adm. Code 702.110 (definitions of “hazardous waste” and “generator”).

### **Determining if Solid Waste is Hazardous Waste**

In the unresolved portion of Count II, the People allege that D'Angelo violated 35 Ill. Adm. Code 722.111, and therefore Section 21(f)(2) of the Act, by not promptly determining if the paint/ink solvents were hazardous waste. Comp. at 19-20. The Agency's inspection report, completed on December 22, 1993, states that the date on which the paint/ink solvent wastes were last analyzed was October 5, 1993. The report lists the paint/ink solvents' hazardous waste numbers as F005, D001, F003, and D035. The record does not indicate when these wastes were *first* analyzed.

As of the Board's November 1998 order, there was an open question as to whether the paint/ink solvents had been held on-site for 90 days or less when the Agency inspected the facility on November 19, 1993. Accordingly, the Board could not then determine if D'Angelo, with an October 5, 1993 waste analysis, had promptly characterized the waste after generating the waste. In contrast, the evidence showed, and the Board therefore found, that the other wastes on-site had not been characterized for at least three years, in violation of the Board's regulation and the Act.

Based on the supplemental affidavits, the Board found above that the paint/ink solvents had been on-site for at least 270 days before the November 19, 1993 inspection. Even with an October 5, 1993 waste analysis (and D'Angelo introduced no evidence of any *earlier* analysis), there is no genuine issue of material fact that D'Angelo did not characterize the paint/ink solvents for at least some eight months after generating them. This is not prompt. The Board grants the People's motion for summary judgment on the claim that D'Angelo violated 35 Ill. Adm. Code 722.111, and thus Section 21(f)(2) of the Act, by not timely determining the hazardous waste status of the paint/ink solvents.

### **Manifesting Special Waste for Disposal**

In the unresolved portion of Count XI, the People allege that D'Angelo violated 35 Ill. Adm. Code 809.301 by not providing special waste manifests when disposing paint filters and pretreatment filters. Comp. at 38-43. In its November 1998 order, the Board found that D'Angelo generated paint filters and pretreatment filters as a result of its manufacture of a product, making them "industrial process waste" and thus "special waste" under the Act. *See* 415 ILCS 5/3.17, 3.45, *amended by* P.A. 92-0574, eff. June 26, 2002 (renumbered as Sections 3.235 and 3.475). The Board further found that D'Angelo disposed the paint filters and pretreatment filters in an on-site dumpster, the contents of which were sent to a solid waste landfill. However, the affidavits that the People had submitted at the time of the Board's prior order failed to state that D'Angelo provided no required special waste manifest when disposing the filters. *See D'Angelo*, PCB 97-66, slip op. at 17 (Nov. 19, 1998).

With the supplemental affidavits of Agency inspectors Bruni and Van Orden, the Board found above that at the November 19, 1993 inspection, D'Angelo had no documentation showing that it concurrently delivered special waste manifests to a licensed special waste hauler when disposing the filters. D'Angelo has introduced no evidence of any special waste manifesting. The Board finds that there are no genuine issues of material fact and that the

People are entitled to judgment as a matter of law: D'Angelo violated 35 Ill. Adm. Code 809.301 by not providing manifests when disposing the paint filters and pretreatment filters, which are special waste.

### **Remedy**

With today's order and its November 19, 1998 order, the Board has found that D'Angelo committed the following violations:

- Storing hazardous waste (plating sludge, bifluoride wastes, and paint/ink solvents) without a RCRA permit, in violation of Sections 21(f)(1) and (f)(2) of the Act and 35 Ill. Adm. Code 703.121(a) and (b) and 728.150(a)(1);
- Failing to determine the hazardous waste status of wastes (plating sludge, bifluoride wastes, paint/ink solvents, paint filters, and pretreatment filters) as required by Section 21(f)(2) of the Act and 35 Ill. Adm. Code 722.111;
- Failing to determine if waste (plating sludge, bifluoride wastes, and paint/ink solvents) is restricted from land disposal as required by Section 21(f)(2) of the Act and 35 Ill. Adm. Code 728.107(a);
- Failing to provide training to personnel in hazardous waste management and failing to maintain hazardous waste records, in violation of Section 21(f)(2) of the Act and 35 Ill. Adm. Code 725.116(a) and (d);
- Failing to maintain adequate aisle space at the facility to allow the unobstructed movement of emergency personnel and equipment, in violation of Section 21(f)(2) of the Act and 35 Ill. Adm. Code 725.135;
- Failing to make arrangements with local emergency response authorities, in violation of Section 21(f)(2) of the Act and 35 Ill. Adm. Code 725.137;
- Failing to maintain a hazardous waste contingency plan, in violation of Section 21(f)(2) of the Act and 35 Ill. Adm. Code 725.151;
- Failing to appoint an emergency coordinator, in violation of Section 21(f)(2) of the Act and 35 Ill. Adm. Code 725.155;
- Failing to inspect the hazardous waste container storage areas weekly, in violation of Section 21(f)(2) of the Act and 35 Ill. Adm. Code 725.274; and
- Failing to provide manifests when disposing special waste, in violation of 35 Ill. Adm. Code 809.301.

Now the Board must determine the appropriate remedy for these violations. The Board considers the Section 33(c) factors when fashioning a remedy for violations and further considers the Section 42(h) factors when determining an appropriate penalty amount.

After finding the original violations, the Board considered these statutory factors and held that (1) a penalty was appropriate, (2) when D'Angelo illegally stored hazardous waste for at least three years, it created a serious risk that the hazardous waste would escape to the environment or harm human health, and (3) D'Angelo's recordkeeping and filing violations created similar risks. See D'Angelo, PCB 97-66, slip op. at 3 (Jan. 7, 1999), citing ESG Watts, Inc. v. PCB, 282 Ill. App. 3d 43, 51, 668 N.E.2d 1015, 1020 (4th Dist. 1996) (“[T]he Act clearly authorizes the Board to assess civil penalties for violations regardless of whether those violations resulted in actual pollution.”). The Board further held that (1) the duration and gravity of the violations served to aggravate, rather than mitigate, D'Angelo's penalty, (2) D'Angelo did not show due diligence for at least three years, and (3) a penalty will enhance voluntary compliance with the Act by D'Angelo and other hazardous waste generators. See D'Angelo, PCB 97-66, slip op. at 3 (Jan. 7, 1999).

The Board's review today of the remaining facts and issues reveals little in the record to aid D'Angelo. Indeed, the Board today finds almost all Section 42(h) factors serve to aggravate the ultimate penalty amount.

### **Civil Penalty**

**Maximum and Requested Civil Penalty.** The Act authorizes the Board to assess a civil penalty of up to \$50,000 per violation and an additional civil penalty of not to exceed \$10,000 per day of violation. 415 ILCS 5/42(a) (2000). However, because of legislative concern over the substantial risks posed by *hazardous waste* violations, the Act provides even greater penalty liability for these violations: not only up to \$50,000 per violation, but up to \$25,000 *per day* of violation. 415 ILCS 5/42(b)(3) (2000).

D'Angelo committed many violations. Under Sections 42(a) and (b)(3) of the Act, the Board could impose a civil penalty of \$50,000 for each violation and as much as \$25,000 per day for a continuing violation. In the motion for summary judgment, the People estimate that D'Angelo's total maximum statutory liability for the *original* adjudicated violations is approximately \$45,650,000. 2d Mot. S. J. at 13. The People state:

Because D'Angelo's violations began on an unknown date prior to the [Agency's] inspection on November 19, 1993, and because the violations were not all remedied on the same day, a precise calculation of the statutory maximum penalty is difficult. Nevertheless, a *conservative calculation* can be based upon *at least* 22 previously established violations that occurred from *at least* November 19, 1993 (the date of the [Agency] inspection) until February 8, 1994 (the date of the [Agency] pre-enforcement conference letter (Exh. K)), or for a period of *at least* 81 days. *Id.* at 12-13 (emphasis added).

Of course, with today's findings, the record reflects even more violations. Today's findings of violation include D'Angelo illegally storing paint/ink solvents that were ignitable and toxic. Today the Board also found the first *disposal* violation in this case, as D'Angelo illegally placed an unknown quantity of industrial process waste into its dumpster to be landfilled, without providing special waste manifests. In all, D'Angelo mishandled three hazardous waste streams (plating sludge, bifluoride wastes, and paint/ink solvents), any one of which could have served as the basis for violations. In addition, many of D'Angelo's violations took place over a period of at least three years. The maximum penalty therefore would be still higher than the People's estimate.

When deciding on a civil penalty or any other remedy for a violation, the Act requires the Board to "enter such final order, or make such final determination, as it shall deem appropriate under the circumstances." 415 ILCS 5/33(a) (2000). The People, as noted, point out that the Act authorizes a penalty upwards of \$50 million, and argue that "the Board should impose a civil penalty of not less than 70,000." 2d Mot. S.J. at 16. To find the appropriate penalty amount, the Board will again analyze the Section 42(h) factors, but this time as they relate to the entire set of violations found against D'Angelo. The Board considers each of these statutory factors in turn.

**Duration and Gravity of Violations.** D'Angelo violated the law for at least three years. D'Angelo took steps to correct the violations, but only after the Agency discovered them. The People assert that "[t]here was a huge threat to human health and the environment from the waste stored by [D'Angelo]" and that D'Angelo "significantly increased the probability of harm in the event of a spill or release." People Resp. at 4.<sup>6</sup> On the other hand, D'Angelo characterizes its noncompliance as mere "paper" violations." Resp. at 11.

D'Angelo's noncompliance did include a complete lack of the requisite recordkeeping and filing so critical to proper waste management. However, D'Angelo also unsafely stored over 3,000 gallons of hazardous waste at its facility. The drums were scattered throughout the facility. All the while, D'Angelo failed to inspect the storage areas as required, failed to have hazardous waste emergency response measures in place, failed to properly train its employees in hazardous waste management, and failed to label the drums for their contents, including waste solvent drums located in a room with chemical products.

The Board previously found in this case:

When D'Angelo illegally stored hazardous wastes for over three years, it created a risk that its hazardous wastes would escape to the environment or harm human health. D'Angelo's recordkeeping and filing violations created similar risks. D'Angelo, PCB 97-66, slip op. at 3.

The Board agrees with the People. When D'Angelo illegally stored hazardous wastes for at least three years, it created a risk that its hazardous wastes would escape to the environment or harm human health. D'Angelo's recordkeeping and filing violations created similar risks. The

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<sup>6</sup> The citation "People Resp. at \_\_" refers to the People's September 17, 1998 response to D'Angelo's counter-motion for summary judgment.

significant threat to human health and the environment posed by improperly managing and storing hazardous wastes was recognized by the General Assembly when, as noted above, it set a higher maximum daily penalty for a continuing hazardous waste violation. *See* 415 ILCS 5/42(b)(3) (2000); *see also* 415 ILCS 5/2(a)(vi) (2000) (“The General Assembly finds . . . that . . . there exist continuing destruction and damage to the environment and harm to the public health, safety and welfare of the people of this State, and that among the most significant sources of this destruction, damage, and harm are the improper and unsafe transportation, treatment, *storage*, disposal, and dumping of hazardous wastes”) (emphasis added).

The Board weighs this Section 42(h) factor in aggravation of penalty.

**Diligence in Attempting to Comply.** In its January 7, 1999 order, the Board stated:

D’Angelo did not show due diligence. D’Angelo’s violations continued for over three years. Although D’Angelo admits that it was “aware of its hazardous and special waste regulatory responsibilities,” ([Resp.] at 13), D’Angelo did nothing to address these responsibilities until the [Agency] brought the violations to D’Angelo’s attention. D’Angelo had a duty to comply with the Act and Board regulations when it began generating and storing hazardous wastes, over three years before the Agency inspected its facility. While D’Angelo’s subsequent compliance may justify a lesser penalty, it does not equate to due diligence. *See ESG Watts*, 282 Ill. App. 3d at 53, 668 N.E.2d at 1022 (upholding imposition of a penalty even though respondent came into compliance after Agency initiated enforcement proceedings). *D’Angelo*, PCB 97-66, slip op. at 4 (Jan. 7, 1999).

The Board weighs this Section 42(h) factor in aggravation of penalty.

**Economic Benefit Accrued.** D’Angelo asserts that “[s]ubstantial economic benefit from failure to comply with reporting, labeling and similar regulatory requirements is unlikely.” Resp. at 12. The People argue that D’Angelo “accrued a significant economic benefit” by “shirking its responsibilities under the hazardous and special waste rules and regulations for over three years.” 2d Mot. S.J. at 14-15. The Board notes that the Fourth District Appellate Court has affirmed the Board’s decision to impose a civil penalty based in part on a violator’s economic benefit resulting from *delayed* compliance. *See ESG Watts*, 282 Ill. App. 3d at 49-50, 668 N.E.2d at 1020. In *ESG Watts*, the Board found that the economic benefit of paying landfill fees *late* was the interest rate on money the violator could have borrowed to timely pay the fees. *ESG Watts*, 282 Ill. App. 3d at 47, 51, 668 N.E.2d at 1018, 1021. That a violator still incurs costs to come into compliance does not eliminate the economic benefit of delayed compliance. Funds that should have been spent on compliance were available for other pursuits.

Here, for years, D’Angelo put off the expenses of making proper waste determinations, preparing and maintaining waste manifests, and disposing hazardous wastes. D’Angelo also avoided many costs of complying with RCRA storage requirements that other companies incurred while lawfully storing their hazardous wastes. The Board weighs this Section 42(h) factor in aggravation of penalty.



**Penalty Amount That Will Deter Further Violations and Aid in Enhancing Voluntary Compliance.** In its order of January 7, 1999, the Board stated that “a penalty will enhance voluntary compliance with the Act by encouraging D’Angelo and other hazardous waste generators to comply with the Act and Board regulations in the future.” D’Angelo, PCB 97-66, slip op. at 4 (Jan 7, 1999). As the court held in ESG Watts:

Some decisions which predate Section 42(h) seem to suggest that whenever compliance has been achieved, punishment is unnecessary. See, e.g., City of Moline, 133 Ill. App. 3d at 433, 88 Ill. Dec. at 417, 478 N.E.2d at 908. However, it is now clear from the 42(h) factors that the deterrent effect of penalties on the violator and potential violators is a legitimate goal for the Board to consider when imposing penalties. ESG Watts, 282 Ill. App. 3d at 52, 668 N.E.2d at 1021.

The People argue that if the Board assesses a minimal penalty, as D’Angelo had requested, “the message would be sent out to other hazardous waste generators that they can violate the hazardous waste storage regulations with impunity as long as they come into compliance within six months after they are caught by [the Agency].” People Resp. at 8. The People further assert:

The RCRA program, however, relies on voluntary compliance. If facilities believed that they did not have to comply until caught by the [Agency], the system would be frustrated. This is not the kind of deterrence that would aid in the enforcement of the Act. *Id.*

During the time of these violations, RCRA was not new to D’Angelo. D’Angelo submitted the necessary form and entered the RCRA hazardous waste generator system in 1981. The violations uncovered by the Agency some 12 years later were many, serious, and long in duration. They occurred with a lack of due diligence and with D’Angelo’s admission that it was aware of its hazardous waste and special waste regulatory responsibilities. Despite the presence of thousands of gallons of unlabelled hazardous waste, D’Angelo had no emergency plan for the facility, no employees trained to handle the waste safely, and no coordination with local authorities to address explosions, spills, or leaks. D’Angelo also disposed paint filters and pretreatment filters without providing the required special waste manifests. D’Angelo, in 1998, had 45 employees, a payroll of approximately \$1.9 million, and sales of approximately \$2.8 million. A substantial penalty is warranted to deter further violations by D’Angelo and those similarly situated.

**Previously Adjudicated Violations.** The record contains no evidence that D’Angelo has previously been adjudicated to have violated the Act. The Board weighs this Section 42(h) factor in mitigation of penalty.

### **Board Finding on Appropriate Remedy**

The Board has considered the factors of Sections 33(c) and 42(h) of the Act. Especially given the grave risks posed to the environment and human health by the hazardous waste violations, the duration of the violations, the vast number of violations, the lack of due diligence, and the need to deter further violations and enhance voluntary compliance, the Board finds that the People's requested civil penalty of \$70,000 is appropriate.

The record contains no evidence of D'Angelo's current financial status. The Board merely notes that D'Angelo's former counsel represented that D'Angelo, in early summer 2002, expressed its intent to end operations at its facility and file for Chapter 7 bankruptcy in July 2002. June 27, 2002 Notice of Withdrawal at 1.

The penalty amount of \$70,000 would be higher but for a few mitigating factors, including one that the Board noted in a prior order: "D'Angelo's subsequent compliance may justify a lesser penalty." D'Angelo, PCB 97-66, slip op. at 4 (Jan. 7, 1999). D'Angelo disposed most of the hazardous waste one month after the November 1993 inspection and disposed the balance in January 1994. D'Angelo was also responsive to the Agency's pre-enforcement requests later in 1994. In addition, D'Angelo cannot be considered a large company. The Act contemplates the Board fashioning a penalty amount that will deter violations by the violator and similarly situated entities. *See* 415 ILCS 5/42(h)(4) (2000).

Consistent with Section 42(a) of the Act, the Board will order D'Angelo to pay the civil penalty to the Environmental Protection Trust Fund. *See* 415 ILCS 5/42(a) (2000). The Board further finds that an order for D'Angelo to cease and desist from any further violations is appropriate.

### **Costs and Attorney Fees**

Section 42(f) of the Act provides that the Board may award costs and reasonable attorney fees to the Attorney General if respondent "has committed a willful, knowing or repeated violation of the Act." 415 ILCS 5/42(f) (2000). D'Angelo acknowledges that it "was aware of its hazardous and special waste regulatory responsibilities." Resp. at 13. Further, D'Angelo repeatedly failed to (1) determine if the waste it generated was hazardous waste, (2) inspect the hazardous waste container areas weekly, and (3) label its more than 60 hazardous waste containers with their accumulation dates and contents.

The Board therefore finds that D'Angelo committed knowing and repeated violations. The violations lasted for years, involved considerable quantities of hazardous waste, and occurred in an absence of due diligence, training, and emergency preparedness. The Board will award costs and reasonable attorney fees to the Attorney General. As directed below, the People must submit an affidavit of its fees and costs.

## CONCLUSION

In Illinois, the provisions of the Act and Board regulations that D'Angelo violated implement the core federal program for protecting human health and the environment from the dangers of hazardous waste: RCRA. Congress enacted RCRA in 1976 in response to growing public awareness of the particularly serious problems caused by mismanaging hazardous waste.

Our General Assembly in turn ensured that Illinois would implement the RCRA program in this State, finding “that hazardous waste presents, in addition to the problems associated with non-hazardous waste, special dangers to health and requires a greater degree of regulation than does non-hazardous waste.” 415 ILCS 5/20(a) (2000). So important is compliance with RCRA that the General Assembly made violators subject, not to a maximum penalty of \$10,000 per day as with other violations, but up to \$25,000 per day for violating *any* State RCRA requirement, including filing requirements. *See* 415 ILCS 5/42(b)(3) (2000).

D'Angelo obtained a RCRA hazardous waste generator identification number roughly 12 years before the Agency found the many problems in this case. D'Angelo admits that it was aware of its environmental regulatory responsibilities. Yet D'Angelo failed to meet even RCRA's most fundamental requirements. D'Angelo did not timely determine if the waste it was generating was hazardous waste, the cornerstone of RCRA. As it turned out, D'Angelo was generating hazardous waste, including 55 drums of toxic plating sludge. The drums of paint/ink solvent included toxic levels of methyl ethyl ketone. In all, there were 61 drums of hazardous waste throughout the facility, some of which were open when not in use and none of which had labels to reveal their contents.

D'Angelo stored over 3,000 gallons of hazardous waste without a RCRA permit. Generally under RCRA, none of the waste should have been at D'Angelo's facility for more than 90 days, yet some of the waste had been there for years. The longer hazardous waste is kept at a generator's site, the greater the risk for accidents. This risk is compounded when employees are untrained, storage areas are not inspected, and emergency planning is ignored. D'Angelo made no arrangements to familiarize police or fire departments with the facility layout or the hazards that the wastes would pose to them in the event of a fire or explosion. Though the record does not show any resulting release of hazardous waste, D'Angelo's violations undermine the integrity of Illinois' RCRA program. *See* 415 ILCS 5/33(c)(i) (the Board must consider the “character and degree of injury to, or *interference with the protection of* the health, general welfare and physical property of the people”) (emphasis added). D'Angelo also illegally disposed an unknown amount of industrial process waste into its dumpster.

D'Angelo insists that it committed only “‘paper’ violations” for which no penalty or only a minor penalty is warranted. The Board cannot agree. The lack of corporate responsibility shown by D'Angelo posed a serious risk of harm to human health and the environment. A corporation doing business in Illinois must not turn a blind eye to its hazardous waste and special waste obligations and expect to receive only a slap on the wrist. Surely the General Assembly did not intend to have the Board *create* an economic incentive to break the law by anemically enforcing the Act's civil penalty provisions. D'Angelo ignored its obligations for at least three years, and sought to comply only when it was caught by the Agency. A significant penalty is

required to deter further violations by D'Angelo and to enhance voluntary compliance by D'Angelo and other similarly situated entities. However, D'Angelo, a company apparently facing bankruptcy, does have a few factors that mitigate against a higher penalty: its subsequent compliance and relatively small size.

The Board finds that there are no genuine issues of material fact and that the People are entitled to judgment as a matter of law on the outstanding issues. The Board therefore grants the People's second motion for summary judgment. In doing so, the Board finds that D'Angelo committed the remaining alleged violations of the Act and Board regulations and must cease and desist from any further violations. The Board also imposes the People's requested civil penalty. Based on today's additional findings, the Board concludes that D'Angelo must pay a civil penalty of \$70,000 for committing numerous violations of the hazardous waste and special waste provisions of the Act and the Board's regulations. In addition, some of D'Angelo's violations were committed knowingly and repeatedly, and the Board will order D'Angelo to pay the People's costs and attorney fees.

Because the Board today determines the appropriate remedy for all violations, the Board incorporates by reference the findings of fact and conclusions of law from its November 1998 and January 1999 orders. This interim opinion and order constitutes the Board's findings of fact and conclusions of law.

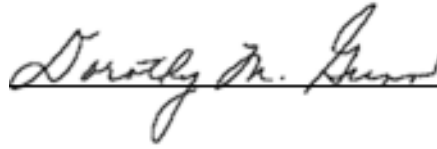
### **ORDER**

1. The Board grants the People's second motion for summary judgment.
2. D'Angelo Enterprises, Inc. (D'Angelo) violated Sections 21(f)(1) and (f)(2) of the Act and 35 Ill. Adm. Code 703.121(a) and (b) and 728.150(a)(1) with respect to paint/ink solvents.
3. D'Angelo violated Section 21(f)(2) of the Act and 35 Ill. Adm. Code 722.111 with respect to paint/ink solvents.
4. D'Angelo violated 35 Ill. Adm. Code 809.301 with respect to paint filters and pretreatment filters.
5. By October 3, 2002, the People must file with the Clerk of the Board an affidavit of the People's costs and attorney fees in this case with any further supporting documents.
6. D'Angelo has 14 days after being served with the documents described in paragraph 5 to respond to the People's claimed costs and attorney fees.

IT IS SO ORDERED.

Board Member W.A. Marovitz dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above interim opinion and order on September 19, 2002, by a vote of 6-1.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", is written over a horizontal line.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board