

INDUSTRIAL SERVICES OF AMERICA INC /FL
Form S-3
May 12, 2004

As filed with the Securities and Exchange Commission on May 12, 2004

Registration No. 333-

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM S-3
REGISTRATION STATEMENT
Under
THE SECURITIES ACT OF 1933

INDUSTRIAL SERVICES OF AMERICA, INC.
(Exact name of registrant as specified in its charter)

Florida
(State or other jurisdiction
of incorporation or organization)

59-0172746
(I.R.S. Employer
Identification Number)

7100 Grade Lane
P.O. Box 32428
Louisville, KY 40232
(502) 366-3452
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Michael P. Shannonhouse, Esq.
7100 Grade Lane
Louisville, KY 40213
(502) 366-3452
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copy To:

Alex P. Herrington, Jr., Esq.
Stites & Harbison, PLLC
400 West Market Street, Suite 1800
Louisville, Kentucky 40202
(502) 587-3400

Approximate date of commencement of proposed sale to the public:
From time to time after this Registration Statement becomes effective.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, check the following box. []

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. []

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. []

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. []

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be Registered	Proposed Maximum Offering Price per Share(1)	Proposed Maximum Aggregate Offering Price(1)	Amount of Registration Fee
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Common Stock (par value \$0.005 per share)	40,000 shares	\$2.50	\$100,000.00	\$12.67
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- (1) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457, based on the exercise price for the common stock under the Stock Option Agreement dated June 11, 1996, between the Registrant and R. Jerry Falkner.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said section 8(a), may determine.

The information in this prospectus is not complete and may be changed. R. Jerry Falkner may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

SUBJECT TO COMPLETION, DATED MAY 12, 2004

PROSPECTUS

INDUSTRIAL SERVICES OF AMERICA, INC.
 40,000 SHARES
 COMMON STOCK, \$0.005 PAR VALUE

This prospectus is part of a Registration Statement which registers an aggregate of 40,000 shares of common stock of Industrial Services of America, which we would issue to R. Jerry Falkner upon his exercise of an option to purchase our common stock. Industrial Services granted the option to Mr. Falkner in a privately negotiated transaction pursuant to a stock option agreement, dated as of June 2, 1996 and the related contract between Industrial Services and Mr. Falkner dated February 23, 1996 for the preparation and distribution of two research reports on Industrial Services during 1996-1997 by Mr. Falkner, and related investor relations services.

Mr. Falkner may reoffer and resell his shares upon exercise of the option from time to time as follows:

- block trades in which the brokers or dealers so engaged will attempt to sell shares as agent but may position and resell a portion of the block as principal to facilitate the transaction;
- purchases by a broker or dealer as principal and resale by a broker or dealer for its account pursuant to this Prospectus;
- ordinary brokerage transactions and transactions in which the broker solicits purchasers;
- in privately negotiated transactions not involving a broker or dealer; and
- a combination of any of these methods of sale.

Mr. Falkner may also sell shares under Rule 144 under the Securities Act, if available, rather than under this prospectus. See "Plan of Distribution" on page 5 for more information related to the sale of the option shares by Mr. Falkner.

In effecting sales, brokers or dealers engaged to sell shares may arrange for other brokers or dealers to participate. Brokers or dealers engaged to sell shares will receive compensation in the form of commissions or discounts in amounts that Mr. Falkner may negotiate immediately prior to each sale. Industrial Services will receive no proceeds from any sales of common stock by Mr. Falkner. Industrial Services has agreed to pay all costs and expenses of this offering but will receive \$100,000 if all options are exercised, which Industrial Services will use for general corporate purposes. Mr. Falkner and the brokers and dealers through whom sales of the shares are made may be deemed to be "underwriters" within the meaning of the Securities Act of 1933, and any profits realized by them on the sale of the shares may be considered to be underwriting compensation.

Industrial Services lists its common stock on the Nasdaq Small-Cap Market under the trading symbol "IDSA." On May 11, 2004, the last reported sale price of the Industrial Services common stock on the Nasdaq Small-Cap Market was \$13.80 per share.

See Risk Factors beginning on page 2 for certain information relevant to an investment in the common stock.

NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED OF THESE SECURITIES OR PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

The date of the prospectus is May ____, 2004.

TABLE OF CONTENTS

	Page
Forward-Looking Statements	1

Risk Factors	2
Industrial Services	4
Selling Shareholder	4
Plan of Distribution	5
Use of Proceeds	6
Transfer Agent	6
Legal Matters	6
Experts	6
Where You Can Find More Information	7
Incorporation of Documents That We File with the Commission	7

No person is authorized to give any information or make any representation not contained or incorporated by reference in this prospectus in connection with the offer contained in this Prospectus, and, if given or made, such other information or representation must not be relied upon as having been authorized by Industrial Services. Neither the delivery of this prospectus nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of Industrial Services since the date hereof.

This prospectus does not constitute an offer to sell or the solicitation of any offer to buy any security other than the securities covered by this prospectus, nor does it constitute an offer or solicitation by anyone in any jurisdiction in which such offer or solicitation is not authorized, or in which the person making such offer or solicitation is not qualified to do so, or to any person to whom it is unlawful to make such offer or solicitation.

This prospectus and the documents incorporated by reference in this prospectus contain forward-looking statements within the meaning of the federal securities laws.

These forward-looking statements include, among others, our expectations and assumptions concerning the following aspects of our business:

- our financial condition and future operating results;
- competitive conditions within the ferrous, non-ferrous and fiber recycling and waste management industries; and
- future economic conditions.

These statements may be found under "Risk Factors". Forward-looking statements are typically identified by the use of terms such as "may," "will," "expect," "anticipate," "estimate," "believe," "intend," "future" and similar words, although some forward-looking statements may be expressed differently.

You should be aware that our actual results could differ materially from those contained in the forward-looking statements. You should consider carefully the statements under "Risk Factors" and other sections of this prospectus, as well as other documents that we file with the Commission, which describe various risks and uncertainties that could cause our actual results to differ from those set forth in the forward-looking statements.

Purchasers of our common stock should not place undue reliance on these forward-looking statements, which speak only as of their respective dates. We undertake no obligation to republish revised forward-looking statements to reflect the occurrence of unanticipated events or circumstances after the date of this prospectus.

Risk Factors

You should carefully consider the following risks and uncertainties and all other information contained in this prospectus, or incorporated herein by reference, before you decide whether to purchase our common stock.

Risks Related to Our Operations

Our business has increasing involvement in ferrous, non-ferrous and fiber recycling. Currently, the prices of the metals are high, but changes in demand or regulation, including foreign demand, could result in a reduction of our revenue and consequent decrease in our common stock price.

Our future operating results will be subject to a number of business and other factors beyond the control of our management, including economic slowdowns and increased competition. Unfavorable general economic conditions including reduced demand for the products sold from our ferrous, non-ferrous and fiber recycling segment could adversely affect our operating results.

Although we believe we have a unique mixture of services we provide our customers in the waste management area and in the ferrous, non-ferrous and fiber recycling segments, a number of competing businesses in each of our business segments may have greater resources than we possess.

Many companies offer or are engaged in the development of products or the provisions of services that may be or are competitive with our current products or services, although we do not believe any competition offers the unique mixture of the services and products we provide in the waste management area. Many entities have substantially greater financial, technical, manufacturing, marketing, distribution and other resources than we possess.

We could incur substantial costs in order to comply with, or to address any violations under, environmental laws that could significantly increase our operating expenses and reduce our operating income.

Our operations are subject to various environmental statutes and regulations, including laws and regulations addressing materials used in the manufacturing of our products. In addition, certain of our operations are subject to federal, state and local environmental laws and regulations that impose limitations on the discharge of pollutants into the air and water and establish standards for the treatment, storage and disposal of solid and hazardous wastes. Failure to maintain or achieve compliance with these laws and regulations or with the permits required for our operations could result in substantial operating costs and capital expenditures, in addition to fines and civil or criminal sanctions, third party claims for property damage or personal injury, cleanup costs or temporary or permanent discontinuance of operations. Certain of our facilities have been in operation for many years and, over time, we and other predecessor operators of these facilities have generated, used, handled and disposed of hazardous and other regulated wastes. Environmental liabilities could exist, including cleanup obligations at these facilities or at off-site locations where materials from our operations were disposed of, which could result in future expenditures that cannot be currently quantified and which could reduce our profits.

We depend on our senior management team and the loss of any member could prevent us from implementing our business strategy.

Our success is dependent on the management and leadership skills of our senior management team. We have not entered into employment agreements with any of our senior management personnel. The loss of any members of our management team or the failure to attract and retain additional qualified personnel could prevent us from implementing our business strategy and continuing to grow our business at a rate necessary to maintain future profitability.

Risks Related to Our Common Stock

Future sales of our common stock could depress our market price and diminish the value of your investment.

Future sales of shares of our common stock could adversely affect the prevailing market price of our common stock. If our existing shareholders sell a large number of shares, or if we issue a large number of shares, the market price of our common stock could significantly decline. Moreover, the perception in the public market that our existing shareholders and in particular members of the Kletter family might sell shares of common stock could depress the market for our common stock. For the last few months, heavy trading volume in our common stock has occurred. This fact coupled with the small available number of freely

tradable shares, 1,545,354 has resulted in volatile price swings of our stock. Consequently, the addition of all or a portion of the shares subject to the option, or the immediate sale of those shares could result in a significant change in the price of our common stock.

The market price for our common stock may be volatile.

In recent periods, there has been volatility in the market price for our common stock. In addition, the market price of our common stock could fluctuate substantially in the future in response to a number of factors, including the following:

- our quarterly operating results or the operating results of our companies in the waste management or ferrous, non-ferrous and fiber recycling industry;
- changes in general conditions in the economy, the financial markets or the ferrous, non-ferrous and fiber recycling industry; and
- increases in materials and other costs.

In addition, in recent years the stock market has experienced extreme price and volume fluctuations. This volatility has had a significant effect on the market prices of securities issued by many companies for reasons unrelated to their operating performance. These broad market fluctuations may materially adversely affect our stock price, regardless of our operating results.

We historically have not paid any cash dividends and although we have considered the payment of dividends from time to time, we may continue to not pay cash dividends going forward.

We have not paid any cash dividends on our common stock and may choose to continue this practice in order to fund working capital, for use in our business operations and in the expansion of our business.

Our principal shareholders have the ability to exert significant control in the matters requiring shareholder vote and could delay, deter or prevent a change in control of Industrial Services.

As of May 5, 2004 and assuming exercise of the Falkner option, Harry Kletter, our chairman and chief executive officer, beneficially owned directly or indirectly 1,429,904 shares of our common stock, or 40.7% of our issued and outstanding common stock. In addition, common stock owned by family members of Mr. Kletter and a charitable foundation and for which Mr. Kletter disclaims beneficial ownership account for an additional 407,435 shares of our common stock. Together with the shares beneficially owned by Mr. Kletter, the Kletter family and affiliates possess 52.3% of the outstanding shares of our common stock. The Kletter family will continue to have significant influence over all actions requiring shareholder approval, including the election of our board of directors. Through their concentration of voting power, the Kletter family could deter, delay or prevent a change in control of Industrial Services or other business combinations that might otherwise be beneficial to our other shareholders. In deciding how to vote on such matters, interests that differ from yours may influence the Kletter family. Mr. Kletter could also strongly influence a change in direction of our business that may not agree with the investment strategies of a number of our shareholders, resulting in liquidation of their investments and volatility in the share price.

Industrial Services

Industrial Services was incorporated under the laws of the State of Florida in October, 1953, as Alson Manufacturing, Inc. Industrial Services is an integrated solid waste management consulting company engaged in the business of ferrous, non-ferrous and fiber recycling, retail and industrial waste management, and waste handling equipment sales and service. Its principal executive offices are located at 7100 Grade Lane, P.O. Box 32428, Louisville, Kentucky 40232 and its telephone number is (502) 366-3452.

Selling Shareholder

Industrial Services and Jerry Falkner entered into a contract dated February 23, 1996 for Falkner to provide to Industrial Services during 1996-1997 two research reports on Industrial Services, to arrange broker presentations and to publish research profile reports regarding Industrial Services on Vestnet internet. As compensation, Industrial Services entered into a stock option agreement dated as of June 11, 1996 with Mr. Falkner, pursuant to which Industrial Services granted Mr. Falkner an option to purchase 20,000 shares of our common stock for \$5.00 per share. Because of a two for one stock split concluded on March 31, 2004, the 20,000 shares became 40,000 shares and the exercise price reduced to \$2.50 per share. The option is exercisable in whole or in part at any time prior to June 11, 2006. The option is not assignable but does contain anti-dilution protections for Mr. Falkner.

The option is exercisable, in whole or in part, but in denominations not less than 1,000 shares, at any time prior to 3:00 p.m. Louisville, Kentucky time on the expiration date referenced above, by giving written notice to Industrial Services to that effect. If the notice of exercise specifies a number of shares less than the full amount subject to the option, and the time for exercise has not expired, Industrial Services shall provide Mr. Falkner with a new revised stock option agreement for the balance of the number of shares subject to the option and then remaining unexercised.

Mr. Falkner has not had any position, office or other material relationship with Industrial Services or any of its predecessors or affiliates within the past three years.

The following table sets forth as of May 5, 2004, with respect to Mr. Falkner, the number of Industrial Services shares he beneficially owned and the number of Industrial Services shares Mr. Falkner holds following the offering, assuming Mr. Falkner sells all of the Industrial Services shares offered hereby.

<u>Name</u>	<u>Owned</u>		<u>To Be Owned</u>	
	<u>Before Offering</u>	<u>Percent</u>	<u>After Offering</u>	<u>Percent</u>
Jerry Falkner	40,000	1.1%	-0-	-0-

(1)

Includes all shares of Industrial Services stock subject to the option. The Industrial Services shares subject to the option and offered by this prospectus are the only shares for which Mr. Falkner has beneficial ownership.

(2)

Calculated on the basis of 3,515,468 shares of Industrial Services common stock outstanding on May 5, 2004 plus all shares of common stock subject to the option.

Plan Of Distribution

The purpose of this prospectus is to permit Mr. Falkner, if he desires, to dispose of some or all of our common stock covered by this prospectus at such times and at such prices as he chooses. Whether he will sell our shares, and the timing and amount of any sale made, is within the sole discretion of Mr. Falkner. Mr. Falkner will in all cases be responsible for complying with the prospectus delivery requirements of Section 5(b)(2) of the Securities Act in connection with the offer and sale of our common stock covered by this prospectus.

Mr. Falkner may reoffer and resell all or a portion of his shares of our common stock from time to time as follows:

- block trades in which the brokers or dealers so engaged will attempt to sell shares as agent but may position and resell a portion of the block as principal to facilitate the transaction;
- purchases by a broker or dealer as principal and resale by the broker or dealer for its account pursuant to this prospectus;
- ordinary brokerage transactions and transactions in which the broker solicits purchasers;
- in privately negotiated transactions not involving a broker or dealer; and
- a combination of any of these methods of sale.

Mr. Falkner may also sell shares under Rule 144 under the Securities Act, if available, rather than under this prospectus.

In effecting sales, brokers or dealers engaged to sell shares may arrange for other brokers or dealers to participate. Brokers or dealers engaged to sell shares will receive compensation in the form of commissions or discounts in amounts that Mr. Falkner may negotiate immediately prior to each sale. Mr. Falkner and the brokers and dealers through whom Mr. Falkner may sell our shares are made may be deemed to be "underwriters" within the meaning of the Securities Act, and any profits realized by them on the sale of shares may be considered to be underwriting compensation.

Industrial Services will receive no proceeds from any sales of our common stock by Mr. Falkner. Industrial Services has agreed to pay all of the costs and expenses of this offering but will receive \$100,000 if all options are exercised, which Industrial Services will use for general corporate purposes.

Use Of Proceeds

We intend to use any proceeds we receive from issuing our common stock upon the exercise of the Falkner option for working capital.

Transfer Agent

The Transfer Agent for the shares of our common stock is the Registrar and Transfer Company, 10 Commerce Drive, Cranford, New Jersey 07016, (800) 866-1340.

Legal Matters

The validity of the common stock offered in this prospectus will be passed upon for us by Stites & Harbison, PLLC.

Experts

The audited consolidated financial statements of Industrial Services of America, Inc. and Subsidiaries incorporated in this Prospectus by reference to the Annual Report on Form 10-K for the year ended December 31, 2003, have been so incorporated in reliance on the report of Crowe Chizek and Company LLC, independent auditors, given on the authority of said firm as experts in auditing and accounting.

Where You Can Find More Information

Industrial Services is subject to the informational requirements of Section 12(g) of the Securities Exchange Act of 1934, and, accordingly, files reports, proxy statements and other information with the Securities and Exchange Commission. You can inspect and copy at prescribed rates the reports and other information filed by Industrial Services at the public reference facilities maintained by the Commission at 450 Fifth Street, N.W., Washington, D.C. 20549 and at its regional office at Citicorp Center, 500 West Madison Street, Chicago, Illinois 60661.

We list our common stock on the Nasdaq Small-Cap Market under the symbol "IDSA," and you can inspect and copy reports and other information concerning us at the offices of the National Association of Securities Dealers, Inc., 1735 K Street, N.W., Washington, D.C. 20006. If available, you may also access reports and other information through the Commission's electronic data gathering, analysis and retrieval system known as EDGAR via electronic means, including the Commission's web site on the Internet (<http://www.sec.gov>).

We have filed with the Commission a registration statement on Form S-3 under the Securities Act of 1933, as amended, with respect to an aggregate of 40,000 shares of our common stock. This prospectus does not contain all of the information contained in the registration statement, certain portions of which we have omitted as permitted by the rules and regulations of the Commission. For further information with respect to Industrial Services and the shares of the common stock offered by this prospectus, reference is made to the registration statement, including the exhibits thereto. Statements in this prospectus as to any document are not necessarily complete, and where any document is an exhibit to the registration statement or is incorporated by reference herein, each statement is qualified in all respects by the provisions of the exhibit or other document, to which reference is hereby made, for a full statement of its provisions. You may obtain a copy of the

registration statement, with exhibits, from the Commission's office in Washington, D.C. at the above address upon payment of the fees prescribed by the rules and regulations of the Commission, or examined there without charges.

Incorporation Of Documents That We File With The Commission

The Commission allows us to "incorporate by reference" into this prospectus the information we file with it, which means that we can disclose important information to you by referring you to those documents. Information incorporated by reference is part of this prospectus, except for any information that is superseded by information included directly in this prospectus. Later information filed with the Commission will update and supersede this information and will be incorporated into this prospectus by reference.

We incorporate in this prospectus the following documents filed with the Commission:

- Our Annual Report on Form 10-K for the year ended December 31, 2003, except exhibit 32.2;
- Our Definitive Proxy Statement on Schedule 14A filed on April 26, 2004;
- Our current reports on Form 8-K and Form 8-K/A filed on February 9, 2004, March 4, 2004, April 8, 2004 and May 7, 2004;
- Our Quarterly Report on Form 10-Q for the quarter ended March 31, 2004, except exhibit 32.3;
- The description of our common stock contained in our registration statement on Form S-1, dated May 22, 1969; and
- All of the filings pursuant to the Securities Exchange Act of 1934 after the date of the filing of the original Registration Statement and prior to the effectiveness of the Registration Statement.

You may request a copy of these documents, at no cost, by written or oral request to:

Industrial Services of America, Inc.
Attn: Chief Executive Officer
7100 Grade Lane
P.O. Box 32428
Louisville, Kentucky 40232
(502) 368-1661

PART II
INFORMATION NOT REQUIRED IN THE PROSPECTUS

Item 14. OTHER EXPENSES OF ISSUANCE AND DISTRIBUTION

The estimated expenses in connection with the issuance and distribution of the securities being registered are set forth in the following table.

SEC Registration Fee	\$ 12.67
Legal Fees and Expenses	7,500.00*
Accounting Fees and Expenses	5,000.00*
Miscellaneous	<u>500.00</u>
	*
Total	\$13,012.67

*Estimated

Item 15. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

a. Article XII of the Certificate of Amendment of Certificate of Incorporation of Industrial Services provides:

The corporation shall indemnify any and all of its directors or officers or former directors or officers or any person who may have served at its request as a director or officer of another corporation in which it owns shares of capital stock or of which it is a creditor against expenses actually and necessarily incurred by them in connection with the defense of any action, suit or proceeding in which they, or any of them, are made parties, or a party by reason of being or having been directors or officers or a director or officer of the corporation, or of such other corporation, except in relation to matters as to which any such director or officer or former director or officer or person shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty. Such indemnification shall not be deemed exclusive of any other rights to which those indemnified may be entitled, under any by-laws, agreement, vote of stockholders, or otherwise. The right of indemnification hereinabove stated shall under no circumstances extend to or include indemnification for liabilities arising under the Securities Act of 1933, as amended.

b. Section 607.0850 of the Florida Statutes generally permits Industrial Services to indemnify its directors, officers, employees or other agents who are subject to any third-party actions because of their service to Industrial Services if such persons acted in good faith and in a manner they reasonably believed to be in, or not opposed to, the best interests of Industrial Services. If the proceeding is a criminal one, such person must also have had no reasonable cause to believe his conduct was unlawful. In addition, Industrial Services may indemnify its directors, officers, employees or other agents who are subject to derivative actions

against expenses and amounts paid in settlement which do not exceed, in the judgment of the board of directors, the estimated expense of litigating the proceeding to conclusion, including any appeal thereof, actually and reasonably incurred in connection with the defense or settlement of such proceeding, if such person acted in good faith and in a manner such person reasonably believed to be in, or not opposed to, the best interests of Industrial Services. To the extent that a director, officer, employee or other agent is successful on the merits or otherwise in defense of a third-party or derivative action, such person will be indemnified against expenses actually and reasonably incurred in connection therewith. This Section also permits Industrial Services to further indemnify such persons by other means unless a judgment or other final adjudication establishes that such person's actions or omissions which were material to the cause of action constitute (1) a crime (unless such person had reasonable cause to believe his conduct was lawful or had no reasonable cause to believe it unlawful), (2) a transaction from which he derived an improper personal benefit, (3) an action in violation of Florida Statutes Section 607.0834 (unlawful distributions to shareholders), or (4) willful misconduct or a conscious disregard for the best interests of the corporation in a proceeding by or in the right of the corporation to procure a judgment in its favor or in a proceeding by or in the right of a shareholder.

Furthermore, Florida Statutes Section 607.0831 provides, in general, that no director shall be personally liable for monetary damages to Industrial Services or any other person for any statement, vote, decision, or failure to act, regarding corporate management or policy, unless: (a) the director breached or failed to perform his duties as a director; and (b) the director's breach of, or failure to perform, those duties constitutes (i) a violation of criminal law, unless the director had reasonable cause to believe his conduct was lawful or had no reasonable cause to believe his conduct was unlawful, (ii) a transaction from which the director derived an improper personal benefit, either directly or indirectly, (iii) a circumstance under which the liability provisions of Florida Statutes Section 607.0834 are applicable, (iv) in a proceeding by or in the right of Industrial Services to procure a judgment in its favor or by or in the right of a shareholder, conscious disregard for the best interest of Industrial Services, or willful misconduct, or (v) in a proceeding by or in the right of someone other than Industrial Services or a shareholder, recklessness or an act or omission which was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. The term "recklessness," as used above, means the action, or omission to act, in conscious disregard of a risk: (a) known, or so obvious that it should have been known, to the director; and (b) known to the director, or so obvious that it should have been known, to be so great as to make it highly probable that harm would follow from such action or omission.

In addition, Industrial Services carries insurance permitted by the laws of Florida on behalf of directors, officers, employees or agents which may cover, among other things, liabilities under the Securities Act.

Item 16. EXHIBITS.

The following documents are filed as Exhibits to this Registration Statement:

- | | | |
|-----|----|---|
| 4.1 | -- | Articles of Incorporation, as amended, of the Registrant |
| 4.2 | -- | Bylaws, as amended, of the Registrant |
| 4.3 | -- | Contract, dated February 23, 1996, by and between the Registrant and R.J. Falkner & Company, Inc. |

- 4.4 -- Stock Option Agreement, dated June 11, 1996, by and between the Registrant and R. Jerry Falkner
- 5.1 -- Opinion of Stites & Harbison, PLLC, regarding the legality of the shares of common stock being registered
- 23.1 -- Consent of Crowe Chizek and Company LLC
- 23.2 -- Consent of Stites & Harbison, PLLC (included in Exhibit 5.1 to this Registration Statement on Form S-3 and incorporated herein by reference)
- 24.1 -- Power of Attorney (included on signature page)

Item 17. UNDERTAKINGS.

(a) The undersigned Registrant hereby undertakes:

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:
 - (i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;
 - (ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement.
 - (iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement.

provided, however

, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the registration statement is on Form S-3, Form S-8 or Form F-3, and the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement.

- (2) That, for the purpose of determining any liability under the Act, each such post-effective amendment shall be deemed to be a new Registration Statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned hereby undertakes that, for the purposes of determining any liability under the Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act that is incorporated by reference in the Registration Statement shall be deemed to be a new Registration Statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers, and controlling persons of the registrant pursuant to the provisions described in Item 15 of this registration statement or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

Signatures

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Louisville, Commonwealth of Kentucky, on May 12, 2004.

INDUSTRIAL SERVICES OF AMERICA,
INC.

By: /s/ Harry Kletter
Harry Kletter
Chairman and Chief Executive Officer

Power of Attorney

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Harry Kletter and Alan Schroering, or either one of them, as his attorney in fact, to sign on his behalf individually and in each capacity stated below any amendments to this registration statement (including post-effective amendments) as the registrant deems appropriate, and to file the same, with exhibits thereto and other documents in connection therewith, including without limitation, a registration statement filed pursuant to Rule 462(b) under the Securities Act of 1933 with the Securities and Exchange Commission, hereby ratifying and confirming all that said attorney-in-fact, or his substitute or substitutes, may do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
<u>/s/ Harry Kletter</u> Harry Kletter	Chairman and Chief Executive Officer (<i>Principal Executive Officer</i>)	May 12, 2004
<u>/s/ Alan Schroering</u> Alan Schroering	Treasurer and Chief Financial Officer (<i>Principal Financial Officer and Principal Accounting Officer</i>)	May 12, 2004
<u>/s/ Bob Cuzzort</u> Bob Cuzzort	Director	May 12, 2004
<u>/s/ Roman Epelbaum</u> Roman Epelbaum	Director	May 12, 2004
<u>/s/ David Lester</u> David Lester	Director	May 12, 2004

/s/ James Vining

Director

May 12, 2004

James Vining

INDEX TO EXHIBITS

<u>Exhibit Number</u>	<u>Description of Exhibit</u>
4.1	-- Articles of Incorporation, as amended, of the Registrant
4.2	-- Bylaws, as amended, of the Registrant
4.3	-- Contract, dated February 23, 1996, by and between the Registrant and R.J. Falkner & Company, Inc.
4.4	-- Stock Option Agreement, dated June 11, 1996, by and between the Registrant and R. Jerry Falkner
5.1	-- Opinion of Stites & Harbison, PLLC, regarding the legality of the shares of common stock being registered
23.1	-- Consent of Crowe Chizek and Company LLC
23.2	-- Consent of Stites & Harbison, PLLC (included in Exhibit 5.1 to this Registration Statement on Form S-3 and incorporated herein by reference)
24.1	-- Power of Attorney (included on signature page)