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STATE OF ILLINOIS  
*Pollution Control Board*

BEFORE THE  
ILLINOIS POLLUTION CONTROL BOARD

REPUBLIC BANK OF CHICAGO, as )  
Trustee of Trust #2234, ARISTOTLE )  
HALIKIAS, LENA HALIKIAS, MICHAEL )  
HALIKIAS, NIKOLAS HALIKIAS, )  
NOULA HALIKIAS, and PATRICIA )  
HALIKIAS, as beneficiaries of Trust #2234, )

PCB-04-69  
(Citizen's Suit UST Enforcement)

Complainants, )

v. )

SUNOCO, INC. (R&M), )

Respondent. )

**RESPONDENT'S RESPONSE TO COMPLAINANTS' MOTION FOR  
RECONSIDERATION OR ALTERNATELY CLARIFICATION**

The Board should deny Complainants' Motion for Reconsideration or Alternately Clarification of the Board's order, dated December 4, 2003, striking those allegations in count IV relating to violations of the regulations of the Office of the State Fire Marshal. As the Board correctly noted, such allegations are frivolous since the Board does not have the authority to enforce regulations of the Office of the State Fire Marshal.

1. The board was correct in striking the allegations *sua sponte*. As the Board noted, it lacks the authority to enforce regulations of the Office of State Fire Marshal. It is appropriate for the Board to act *sua sponte* on such jurisdictional matters.

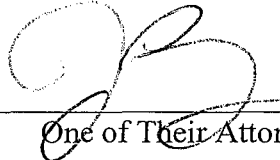
2. Complainant incorrectly points to *Miehle v. Chicago Bridge and Iron Company*, PCB 93-150, 1993 ENV LEXIS 1124 (Nov. 4, 1993), in support of its argument that the

Board has authority to adjudicate violations of the Fire Marshal's regulations. Miehle deals with the Board's authority to enforce the Board's regulations (in that case, 35 Ill. Adm. Code 731.160), not the Fire Marshal's.

3. The Fire Marshal's regulations are promulgated pursuant to the Gasoline Storage Act, 430 ILCS 15, not the Environmental Protection Act, 415 ILCS 5. The Board has previously held that it is not authorized to review decisions made by the Fire Marshal under the Gasoline Storage Act. See *Vogue Tyre & Rubber Company v. Office of State Fire Marshal*, PCB 95-78, 2002 WL 31814727 (Dec. 5, 2002) (noting that Board has consistently held it is not authorized to review registration decisions by Fire Marshal).

Respectfully Submitted,

SUNOCO, INC. (R&M)

By:  \_\_\_\_\_  
One of Their Attorneys

Joseph Freudenberg, Esq.  
Sunoco, Inc. (R&M)  
10 Penn Center – 17<sup>th</sup> Floor  
1801 Market Street  
Philadelphia, PA 19103  
(215) 977-6789

December 26, 2003

BEFORE THE  
ILLINOIS POLLUTION CONTROL BOARD

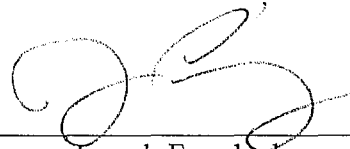
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SUNOCO, INC. (R&M), )  
)  
Respondent. )

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached Respondent's Response to Complainants' Motion for Reconsideration or Alternately Clarification, by U.S. Mail, upon the following persons on December 26, 2003:

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

Andrew H. Perellis  
Seyfarth Shaw LLC  
55 East Monroe Street  
Suite 4200  
Chicago, IL 60603

  
\_\_\_\_\_  
Joseph Freudenberg

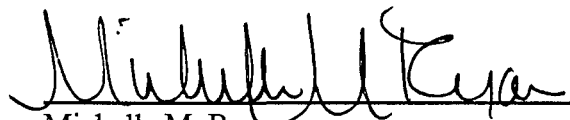
**PROOF OF SERVICE**

I hereby certify that I did on the 23rd day of December 2003, send by Certified Mail, Return Receipt Requested, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instrument(s) entitled ADMINISTRATIVE CITATION, AFFIDAVIT, and OPEN DUMP INSPECTION CHECKLIST

To: Rosemary Pehm  
1077 State Route 29  
Henry, Illinois 61527

and the original and nine (9) true and correct copies of the same foregoing instruments on the same date by Certified Mail, Return Receipt Requested, with postage thereon fully prepaid

To: Dorothy Gunn, Clerk  
Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601

  
Michelle M. Ryan  
Special Assistant Attorney General

Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
(217) 782-5544