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BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD

JAN - 7 2004

STATE OF 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.)

NOTICE OF FILING

To: Joseph Freudenberg, Esq., SUNOCO, INC. (R&M), 10 Penn Center - 17th Floor, 1801 Market Street, Philadelphia, PA 19103

PLEASE TAKE NOTICE that on January 7, 2004, we filed with the Clerk of the Illinois Pollution Control Board ("Board"), 100 West Randolph Street, James R. Thompson Center Suite 11-500, Chicago, Illinois, 60601-3218, an original and nine (9) copies of Complainants' **REPLY IN SUPPORT OF COMPLAINANTS' MOTION FOR RECONSIDERATION OR ALTERNATELY CLARIFICATION**; a copy of said motion is attached hereto and hereby served upon you.

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

Andrew H. Perellis
SEYFARTH SHAW LLC
55 East Monroe Street
Suite 4200
Chicago, Illinois 60603
(312) 346-8000

By: 
One of Their Attorneys

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**REPLY IN SUPPORT OF COMPLAINANTS' MOTION FOR RECONSIDERATION OR
ALTERNATELY CLARIFICATION**

Complainants, Republic Bank of Chicago, et al., by their counsel, submit their reply memorandum in support of the motion pending before the Pollution Control Board to reconsider that portion of its Order dated December 4, 2003, which struck as frivolous "the allegations in count IV [of the Complaint] relating to violations of the [regulations of the] Office of State Fire Marshal." Leave to file this reply was granted by the Hearing Officer on January 6, 2004.

In its filed response opposing Complainants' motion, Respondent SUNOCO, INC., does not dispute that violations of the regulations of the State Fire Marshal may be relevant to Complainants' claims and could support a violation of the Environmental Protection Act. See ¶¶ 2-4 of Complainants' Motion. For any of the reasons set forth in those paragraphs, no allegation of the Complaint is frivolous.

SUNOCO does challenge paragraph 5 of Complainants' Motion by asserting that the Board lacks authority to directly enforce violations of Fire Marshal's regulations because they were adopted under the Gasoline Storage Act, 430 ILCS 15. Even if this were so, for the reasons stated in the Motion, the allegations of such violations still would not be frivolous. However, a disciplined analysis of the Environmental Protection Act shows that SUNOCO's contention is incorrect.

In support of its limited contention, SUNOCO misstates the holding of the Board in a prior case, *Vogue Tyre & Rubber Co. v. Office of State Fire Marshal*, PCB 1995-78 (Dec. 5, 2002). That case held only that the Board had no authority to review *tank registration* decisions of the State Fire Marshal.

SUNOCO provides no authority that holds that all of the Fire Marshal's regulations promulgated pursuant to the Gasoline Storage Act are unenforceable in an action before the Board. No such authority exists, and indeed, this proposition is contradicted by the express language of the Environmental Protection Act ("Act"). The Act specifically provides that certain regulations of the Fire Marshal – those pertaining to tank removal, reporting and response action – are part of the "Illinois Leaking Underground Storage Tank Program," a program created by the legislature under the *Environmental Protection Act*. See Section 57.3 of the Act (the "Illinois Leaking Underground Storage Tank Program," is established to be "administered by the Office of the State Fire Marshal and the Illinois Environmental Protection Agency"). The Act does not compel the Fire Marshal to promulgate regulations under the authority of the Act, but instead mandates, in Section 57.5(b), that removal of a UST "be carried out in accordance with regulations adopted by the Office of State Fire Marshal." Similarly,

Section 57.6(a) does not obligate the Fire Marshal to promulgate rules, but instead mandates that UST owners comply "with *all* applicable statutory and regulatory reporting and response requirements." (Emphasis added.)

Accordingly, although the Fire Marshal may have adopted regulations pursuant to the Gasoline Storage Act, compliance with regulations governing UST removal, reporting or response remains a part of the "Illinois Leaking Underground Storage Tank Program" established under the Environmental Protection Act. One's failure to comply with the UST response requirements, i.e., the Fire Marshal's release identification, investigation and corrective action regulations, constitutes a violation of the Act. Such failure necessarily is enforceable under the Act in an action before the Board pursuant to the Board's Section 31(d) authority to adjudicate not only a violation of the Act, but also "any rule or regulation thereunder."

WHEREFORE, Complainants respectfully ask the Board to reconsider its Order dated December 4, 2003, and grant to Complainants the relief sought in their Motion.

Respectfully Submitted,

REPUBLIC BANK OF CHICAGO, as
Trustee of Trust # 2234, **ARISTOTLE
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HALIKIAS**, and **PATRICIA HALIKIAS**, as
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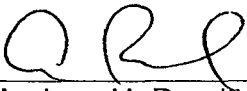
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AFFIDAVIT OF SERVICE

The undersigned, an attorney, states that he caused a copy of the attached (i) **REPLY IN SUPPORT OF COMPLAINANTS' MOTION FOR RECONSIDERATION OR ALTERNATELY CLARIFICATION**, and (ii) **NOTICE OF FILING**, to be served upon the following by first-class mail, from 55 East Monroe St., Chicago, Illinois 60603, this 7th day of January, 2004:

Joseph Freudenberg, Esq.
SUNOCO, INC. (R&M)
10 Penn Center - 17th Floor
1801 Market Street
Philadelphia, PA 19103



Andrew H. Perellis

SUBSCRIBED TO AND SWORN BEFORE ME
THIS 7th DAY OF JANUARY, 2004



NOTARY PUBLIC

