BEFORE THE POLLUTION CONTROL BOARD OF THE STATE OF ILLINOIS

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CITY OF TAYLORVILLE/TAYLORVILLE MUNICIPAL AIRPORT,

DEC 1 3 2011

STATE OF ILLINOIS

Pollution Control Board

vs.

Petitioner,

PCB No. 12-57 (UST Appeal)

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, Respondent.

RESPONSE TO MOTION TO DISMISS FILED BY THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

NOW COMES the CITY OF TAYLORVILLE, ILLINOIS/TAYLORVILLE MUNICIPAL AIRPORT, by and through its Attorneys, David R. Fines, P.C., and for its RESPONSE TO MOTION TO DISMISSS filed by the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, states as follows:

1. The cases cited by the Illinois Environmental Protection Agency (hereinafter referred to as "EPA"), address situations where a case goes to judgment before an Illinois Court of Law without an attorney representing one party or the other. In this particular case, the facts are not similar to those set forth in the cases cited. Rather, the City of Taylorville filed an Appeal without an attorney involved. The Illinois Pollution Control Board ruled on or about November 3, 2011, that the City of Taylorville be granted leave to file an Amended Appeal with an Entry of Appearance by an attorney. The City of Taylorville filed both an Entry of Appearance with the law firm of David R. Fines, P.C. and an Amended Appeal signed by attorney David R. Fines of the law firm of David R. Fines, P.C., with both mailings being postmarked December 1, 2011. Subsequent thereto, the City of Taylorville, by and through its attorneys, David R. Fines, filed its Supplement to Amended Appeal which basically contained nine CD ROMS containing the Amended 45 Day Report Dated April 4, 2011, which was referenced in the Amended Appeal.

2. Based upon the above, the Illinois Pollution Control Board has not made a final decision with regard to the Appeal. Their ultimate decision would be the equivalent of a judgment as set forth in the cases cited by the EPA. Thus, the City of Taylorville would argue that the cases cited are not relevant to the case at hand. Because the Illinois Pollution Control Board granted leave for the City of Taylorville to file an Amended Appeal and the mere fact that the Illinois Pollution Control Board has not made a final decision (Judgment) the Motion to Dismiss filed by the EPA should be denied.

WHEREFORE, for all the above reasons, the City of Taylorville, Illinois, a municipal corporation, asks this Honorable Court to deny the Motion to Dismiss filed by the Illinois Environmental Protection Agency and allow, as the Illinois Pollution Control

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Board has ruled, to proceed to decision on the Appeal as filed by the City of Taylorville, Illinois.

Respectfully submitted,

Petitioner, CITY OF TAYLORVILLE, ILLINOIS/TAYLORVILLE MUNICIPAL AIRPORT, by and through its attorneys, DAVID R. FINES, P.C.

BY:

DAVID R. FINES

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true (735 ILCS 1/109).

Dated: December 12201

By: ____

David R. Fines Reg. No.: 06196440 David R. Fines, P.C. Attorneys for Petitioner 402 East Market Street Taylorville, Illinois 62568 Phone: (217) 824-8883 Fax: (217) 824-8884

CERTIFICATE OF SERVICE

Now comes DAVID R. FINES of the law firm of DAVID R. FINES, P.C., of Taylorville, Illinois, and hereby certifies that he caused to be served upon the following named persons, a copy of the **RESPONSE TO MOTION TO DISMISS FILED BY** <u>THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY</u>, which this certificate of service is attached, said service being made by depositing a copy of the same in the United States Post Office Box in envelopes plainly addressed to them with postage prepaid, this day of December, 2011.

TO:

John Therriault, Acting Clerk Illinois Pollution Control Board James R. Thompson Center 100 West Randolph Street, Suite 11-500 Chicago, Illinois 60601

Melanie A. Jarvis Assistant Counsel Special Assistant Attorney General Division of Legal Counsel 1021 North Grand Avenue, East P.O. Box 19276 Springfield, Illinois 62794-9276 DEC 1 3 2011 STATE OF ILLINOIS

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DAVID R. FINES

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DAVID R. FINES MICHELLE M. COADY JARRED J. RAHAR

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STATE OF ILLINOIS Pollution Control Board

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December 12, 2011

SENT VIA OVERNIGHT MAIL

EG584599457US

John Therriault, Acting Clerk Illinois Pollution Control Board James R. Thompson Center 100 West Randolph Street, Suite 11-500 Chicago, Illinois 60601

Re: City of Taylorville/Taylorville, Municipal Airport vs. Illinois Environmental Protection Agency, Case No. PCB No. 12-57 (UST Appeal)

Dear Mr. Therriault:

I recently received a call from Carol Webb who, I believe, is with the Illinois Pollution Control Board. She inquired on or about December 6, 2011, as to whether or not the City of Taylorville would respond to the Motion to Dismiss filed by the Illinois Environmental Protection Agency. I informed her that I would respond to the Motion to Dismiss within seven days. I enclose an original and ten copies of the Response to the Motion to Dismiss which I would ask that you file at your convenience. I would also ask that you return a file-stamped copy to me in the selfaddressed, stamped envelope. I have sent this to you by overnight mail. Therefore, you should receive the same on December 13, 2011.

Should you have any questions, please do not hesitate to call. Otherwise, I thank you for your attention to this matter.

Very truly yours, DAVID R. FINES, P.C.

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DAVID R. FINES

DRF/sd Enclosures