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**CERTIFICATE OF SERVICE**

I, the undersigned attorney at law, hereby certify that on September 29, 2008, I served true and correct copies of a **MOTION FOR LEAVE TO FILE RESPONSE** and a **RESPONSE TO PETITIONERS' MOTION TO RECONSIDER** via the Board's COOL System and by placing true and correct copies thereof in properly sealed and addressed envelopes and by depositing said sealed envelopes in a U.S. Mail drop box located within Springfield, Illinois, with sufficient First Class postage affixed thereto, upon the following named persons:

John Therriault, Acting Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,  
Respondent

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meritorious argument that would warrant the Board's reconsideration of its August 7, 2008 final order ("Board's final order" or "final order").

### **II. THE PETITIONER RAISES NO NEW FACTS OR EVIDENCE**

Several of the arguments posited by the Petitioner relate to its belief that the Board failed to properly consider information that was before the Board as of the date of the final order. The Board was completely briefed on the relevant issues of the case and the Petitioner does not present sufficient grounds for reconsidering the final order. The Petitioner is simply not happy with the conclusion that the Board reached following consideration of those issues.

The Petitioner is merely attempting to re-argue issues that were already raised and briefed prior to the Board reaching its decision on August 7, 2008. The Petitioner has not detailed any newly discovered evidence.

### **III. THE PETITIONER RAISES NO CHANGES IN LAW**

The Petitioner's motion is not premised on any changes in applicable law since the date of the Board's decision.

### **IV. THE PETITIONER DOES NOT RAISE ANY SUCCESSFUL ARGUMENT THAT THE BOARD MISAPPLIED THE RELEVANT LAW**

The Board denied the Intervenors' motion for intervention due to the fact that no controversy continued to exist in the case and that it was being dismissed by the Petitioner. The Intervenors' have not raised any arguments that support the position that a dispositive motion should not be heard prior to a motion for intervention. The Petitioner has long had control of the cases before the Board and could dismiss the case or waive deadlines at its own discretion. Here the Petitioner has moved to dismiss the case as is their prerogative. The case is finished and no controversy remains at that time. Simply stated, the motion to intervene was not timely filed and the Board correctly decided the dispositive motion first. Further, granting the intervention would

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inhibit the timely disposition of the case in violation of the Board's rules. Further granting the intervention would not resolve any issues before the Board, first because no issues remain, and second because of the Petitioner's control over deadlines, hearings, and dismissals. The intervention would not and should not prevent the Petitioner from its right to dismiss the case, waive deadlines or push the case to hearing. The Board correctly decided the issue and did not misapply relevant law.

**VI. CONCLUSION**

The Petitioner's arguments in its motion to reconsider are without merit and thus the motion should be denied. There are no arguments presented in the motion that meet the criteria that would warrant the Board's reconsideration of its final order.

WHEREFORE, for the reasons stated above, the Illinois EPA hereby respectfully requests that the Board deny the Petitioner's motion.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,  
Respondent

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