

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
PEOPLE OF THE STATE OF ILLINOIS

STATE OF ILLINOIS )  
Complainant, )  
v. ) PCB No. 07-95  
) (Enforcement)  
AET ENVIRONMENTAL, INC. AND )  
E.O.R. ENERGY, LLC, )  
Respondents. )  
\_\_\_\_\_ )

**NOTICE OF MOTION AND ELECTRONIC FILING**

**ALL PARTIES PLEASE TAKE NOTICE** that on December 3, 2012, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, James R. Thompson Center, 100 W. Randolph St., Ste. 11-500, Chicago, IL 60601, the following **Certificate of Filing and Service and MOTION FOR LEAVE TO REPLY** copy of which is attached hereto and herewith served upon you.

**CERTIFICATE OF FILING AND SERVICE**

I hereby certify that I did on December 3, 2012, e-file with the Clerk, and on same date did send by e-mail and First Class U.S. Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box, a true and correct copy of this document and the following instrument entitled **MOTION FOR LEAVE TO REPLY**, as counsel for **E.O.R. Energy, LLC**, to the following persons by the method and at the address indicated:

**SERVICE LIST**

*E-Filed with:*

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

*Served By U.S. Mail and E-Mail On:*

State of Illinois - IEPA c/o Mr. Michael Mankowski, Esq. Assistant Attorney General 500 South Second Street Springfield, Illinois 62706	AET Environmental, Inc. c/o Felipe Gomez, Esq. 116 S. Western Ave. - # 12319 Chicago, IL 60612-2319 312-399-3966 gomzfnl@netscape.net	Hearing Officer C. Webb IPCB 1021 N. Grand Avenue East Springfield, IL 62794
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Dated: 12/3/12

Respectfully submitted,

s/: *Felipe Gomez, Esq.*  
Felipe Gomez, Esq.

**LAW OFFICE OF FELIPE GOMEZ, ESQ.**  
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**E.O.R. ENERGY LLC MOTION FOR LEAVE TO REPLY**

NOW COMES CO-RESPONDENT E.O.R. ENERGY, LLC, by and through undersigned counsel of record, (hereinafter "EOR."), and pursuant to 35 IAC 101.501(e) hereby files this **MOTION FOR LEAVE TO REPLY to Illinois' November 14, 2012, RESPONSE to EOR's October 18, 2012, Motion to Reconsider**, such Reply to be filed on December 12, 2012, assuming leave of the Board to do so during the status conference scheduled for December 11, 2012, allowing time and opportunity for the State to object to this Motion on the record if desired prior to putting same on the Record. In support of this Motion, EOR states the following in support of the relief requested:

1. The Board has the authority to grant a Movant a right to reply where failure to do so would create material prejudice. 35 Ill. Admin. Code 101.501(e).
2. EOR would be materially prejudiced if not granted a Reply and the Board rules in favor of the State based on the Response, since the State's Response raises new procedural arguments and itself requests relief, not responsive to the merits of the Motion to Reconsider, which should have made by Motion to Strike or other motion (which would have allowed EOR a response by rule), including new arguments that:
  - The Board should adopt a new interpretation of the 35 IAC 101 rules for service that would render the 10/18/12 Motion to Reconsider untimely, despite the State having agreed in open hearing to a briefing schedule thereon without making a timeliness objection, despite USPS records showing the 9/6/12 IPC order was received by EOR on 9/13/12, and despite IEPA having itself been granted nearly 2 weeks additional time beyond the allowed 14 days to respond to the Motion *11/14/12 Response at 17-20*.
  - The Motion to Reconsider is inadequate because it allegedly does not provide "new information" to the IPCB, and EOR is estopped from presenting any new information anyway, even though the public record, and the record in this matter, as is, already contained the State's own evidence of the fact that EOR had been issued UIC permits for the Count V wells that render IEPA without jurisdiction in this matter. *Response at 3-6. (See EOR MSJ, Exhibit I, Johnson Affidavit at Attachment 3, at p199 of 210 pdf - 4/5/05 IDNR facsimile of EOR's Class II UIC Permits to IEPA)*

3. Additionally, the State's 11/14/12 Response makes new jurisdictional arguments, in the form of affirmative defenses or new theories of liability, to support its case in chief, which were never before pleaded in the complaint or raised in any prior pleading, including a newly proposed theory that Illinois environmental laws require a Class II injection well operator to have dual permits, from each IEPA and IDNR, for the same injection, and that IEPA can decide by fiat when and if a Class II permittee needs a RCRA permit too, despite 415 ILCS 5/4(l) saying otherwise and despite IDNR's acknowledged SDWA jurisdiction over Class II wells and oil and gas leases in general. *Response at 6-17.*
4. The State has been granted a reply to a response already in this matter, having until 12/5/12 to file a reply to AET's 11/14/12 Response to the States' Motion for Summary Judgement against it, thus in fairness it cannot complain of a similar reply provision here, especially given that such EOR Reply will be filed by 12/12/12, assuming leave to do so is granted during the 12/11/12 status conference.
5. The State has taken the position, as recently as July of 2012, that "Section 10 1.500( e) should be revised to allow a right of reply to the movant. This change would make Board practice more consistent with that of the circuit courts. The movant has the burden of proof or persuasion, depending upon the motion....The reason for the right of reply is simple fairness.". *People v Environmental Law and Policy Center, PCB 10-61 & 11-2, 7/11/12 State Response to Motion for Leave to Reply at 8-9, para. 9.*

WHEREFORE, given the material and other prejudice EOR would suffer as alleged above, EOR respectfully requests that the Board **GRANT its Motion for Leave to Reply** and allow it Leave to File its Reply to the 11/14/12 State Response to EOR's Motion to Reconsider on 12/12/12, or as soon thereafter as is deemed appropriate or agreed by the Board.

Dated: **12/3/12**

Respectfully submitted For EOR By:

s/: *Felipe Gomez, Esq.*

**Felipe Gomez, Esq.**

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