

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

RELIABLE STORES, INC.,)
 Petitioner,)
 v.)
 PCB 2019-002
 (LUST Permit Appeal)
OFFICE OF THE STATE FIRE)
MARSHAL,)
 Respondent.)

NOTICE OF FILING AND PROOF OF SERVICE

TO: Carol Webb, Hearing Officer
Illinois Pollution Control Board
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Springfield, IL 62794-9274
(Carol.Webb@illinois.gov)

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PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board, PETITIONER'S RESPONSE IN OPPOSITION TO RESPONDENT'S MOTION FOR LEAVE TO FILE REPLY, copies of which are herewith served upon the above persons.

The undersigned hereby certifies that I have served this document by e-mail upon the above persons at the specified e-mail address before 5:00 p.m. on the 5th day of August, 2021. The number of pages in the e-mail transmission 4 pages.

RELIABLE STORES, INC.

BY: LAW OFFICE OF PATRICK D. SHAW

BY: /s/ Patrick D. Shaw

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RELIABLE STORES, INC.,)
 Petitioner,)
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**PETITIONER’S RESPONSE IN OPPOSITION
TO RESPONDENT’S MOTION FOR LEAVE TO FILE REPLY**

NOW COMES Petitioner, RELIABLE STORES, INC., by its undersigned counsel, and pursuant to Section 101.500(d) of the Board’s Procedural Rules (35 Ill. Adm. Code § 101.500(d)), in opposition to Respondent’s Motion for leave to file Reply, states as follows:

1. On June 22, 2021, the Office of the State Fire Marshal (hereinafter “the OSFM”) filed Respondent’s Motion for Leave to File Reply, attaching a copy of the Reply thereto.
2. Within 14 days of service of any motion, a party “may” file a response to the motion. (35 Ill. Adm. Code § 101.500(d)) This filing is made fourteen days from June 22, 2021, and is therefore timely.
3. There is no right to reply, “except as the Board or the hearing officer permits to prevent material prejudice.” (35 Ill. Adm. Code § 101.500(e))
4. The only prejudice claimed in the motion is that new arguments were made on page 3 of Petitioner’s Response in Opposition to Respondents’s Motion for Stay. (Respondent’s Motion for Leave, ¶ 5)
5. The attached Reply addresses the referenced new arguments in Part One, which contains no new law or facts and fails to reveal how the OSFM was materially prejudiced.

6. Parts Two and Three of the Reply simply contain reargument and an attempt to restate points required to be demonstrated in the motion for stay. If the Board gives leave to file this Reply, these parts should be stricken.

7. Part Four of the Reply seeks leave to file a response to the fees petition if the stay is rejected. The issues identified in Part Four lack legal merit. The case previously cited by the OSFM in support of its proposition only addresses situations in which a party prevails on some claims. Globalcom v. Illinois Commerce Commission, 347 Ill. App. 3d 592 (1st Dist. 2004). Petitioner prevailed on the single claim made here, and thus it would be a waste of time for the Board to grant the OSFM another extension of time to make an argument without any supporting legal precedent.

8. Finally, the Board did not in any way state that “all necessary cleanup activities and repairs were completed as of May 9, 2018.” (Reply, at p. 5 (citing Board Opinion, at p. 3)) The record evidences off-site contamination, and the Board merely stated that “Reliable initiated cleanup activities, and a subsequent inspection by OSFM on May 9, 2018, noted that all repairs were completed.” (Board opinion, at p. 3 (emphasis added) Thus, the OSFM clearly misrepresented the Board’s finding. Petitioner could perform certain limited early action activities prior to submission of any plans to the Agency within the first 45 days. (35 Ill. Adm. Code § 734.210 (early action)) Afterwards an eligibility and deductible determination would necessarily be required as part of Illinois EPA oversight of corrective action. See Fees Petition, at ¶ 5. The OSFM is blocking the cleanup of this release and is either unaware or indifferent, and in either case the Board should not exercise its discretion in support of it.

WHEREFORE, Petitioner, RELIABLE STORES, INC., requests that the stay be denied and the Board authorize payment from the Leaking Underground Storage Tank Fund in the amount of \$15,900.00 in attorney's fees and litigation costs pursuant to 415 ILCS 5/57.8(1), and for such other and further relief as the Board deems meet and just.

Respectfully submitted,

RELIABLE STORES, INC.
Petitioner,

BY: LAW OFFICE OF PATRICK D. SHAW
Its attorneys

BY: /s/ Patrick D. Shaw

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