

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

SHREE KRUBER, INC.,	,	)	
	Petitioner,	)	
		)	
	v.	)	PCB 2021-003. 2021-005
		)	(LUST Appeal)
ILLINOIS ENVIRONMENTAL		)	(consolidated)
PROTECTION AGENCY,		)	
	Respondent.	)	

**NOTICE**

Don Brown, Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph, Suite 11-500  
Chicago, IL 60601  
[don.brown@illinois.gov](mailto:don.brown@illinois.gov)

Carol Webb, Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
P.O. Box 19274  
Springfield, IL 62794-9274  
[carol.webb@illinois.gov](mailto:carol.webb@illinois.gov)

Jennifer M. Martin  
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[Melissa.Brown@heplerbroom.com](mailto:Melissa.Brown@heplerbroom.com)

**PLEASE TAKE NOTICE** that I have today filed with the office of the Clerk of the Pollution Control Board **ILLINOIS EPA'S LEAVE TO FILE REPLY AND ILLINOIS EPA'S REPLY**, copies of which are herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,  
Respondent



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Melanie A. Jarvis  
Assistant Counsel  
Division of Legal Counsel  
1021 North Grand Avenue, East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
217/782-5544  
217/782-9143 (TDD)  
Dated: August 18, 2021

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OF THE STATE OF ILLINOIS**

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	v.	)	PCB 2021-003, 2021-005
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ILLINOIS ENVIRONMENTAL		)	(consolidated)
PROTECTION AGENCY,		)	
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**ILLINOIS EPA'S LEAVE TO FILE REPLY**

**NOW COMES** the Respondent, the Illinois Environmental Protection Agency ("Illinois EPA" or "Agency"), by one of its attorneys, Melanie A. Jarvis, Assistant Counsel and Special Assistant Attorney General, and pursuant to Section 101.500(e) of the Illinois Pollution Control Board's ("Board") procedural rules (35 Ill. Adm. Code 101.500(e)), hereby submits **ILLINOIS EPA'S LEAVE TO FILE REPLY** to the Illinois Pollution Control Board ("Board"). In support of this motion for leave, the Illinois EPA provides as follows.

1. The Illinois EPA needs to clarify a mistaken matter in the captioning of their response and a couple matters mentioned in the Petitioner's response need clarification as well and material prejudice may result if the Illinois EPA is not allowed to reply.
2. The Petitioner's arguments require a response from the Illinois EPA.

For the reasons stated herein, the Illinois EPA hereby respectfully requests that the Hearing Officer allow the Illinois EPA to file a reply to the Petitioner's response to prevent material prejudice.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,  
Respondent

A handwritten signature in black ink, appearing to read "Melanie A. Jarvis", written over a horizontal line.

Melanie A. Jarvis  
Assistant Counsel  
Division of Legal Counsel  
1021 North Grand Avenue, East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
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**ILLINOIS EPA'S REPLY**

**NOW COMES** the Respondent, the Illinois Environmental Protection Agency ("Illinois EPA" or "Agency"), by one of its attorneys, Melanie A. Jarvis, Assistant Counsel and Special Assistant Attorney General, and hereby, as an alternative to its Motion to Dismiss and in an effort to expedite the review of the case, submits **ILLINOIS EPA'S REPLY** to the Illinois Pollution Control Board ("Board").

**POINTS OF CLARIFICATION**

1. The Illinois EPA mis-captioned its motion in the heading as a cross-motion for summary judgement. While it was corrected in the notices and elsewhere in the pleadings as merely a response to the Petitioner's motion for summary judgement, an error was made in not correcting the caption on the actual motion. The Illinois EPA did not file a cross motion for summary judgement. It merely filed a response due to its position that there is a material issue of fact and that this case and its issues are better heard at a hearing.
2. The Illinois EPA does not approve individual maps contained within plans. The map in question was in a plan that was approved despite being drawn incorrectly because the sampling point the plume should have been drawn to was below Tier I objectives.

3. While observations of employees of the Office of State Fire Marshall are used as evidence in determining whether a release has been confirmed whether a release is a new release or a re-reporting of a prior release is under the purview of the Illinois EPA as the Board has previously held. Until the 45-day report is received and all the evidence is looked at this determination cannot be made.

### CONCLUSION

It is the Illinois EPA's technical determination that this release is a re-reporting based upon the evidence and documentation presented within the Administrative Record despite the Petitioner's cherry picking of the facts and Illinois EPA believes a full hearing with cross examination of the Petitioner's witnesses will show that the Illinois EPA made the correct decision bases upon the facts and the law.

**WHEREFORE:** for the above noted reasons, the Illinois EPA respectfully requests the Board **DENY** Petitioner's Motion for Summary Judgment and set this case for hearing.

Respectfully submitted,

**ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,**

Respondent



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Melanie A. Jarvis  
Assistant Counsel  
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**CERTIFICATE OF SERVICE**

I, the undersigned attorney at law, hereby certify that on **August 18, 2021**, I served true and correct copies of **ILLINOIS EPA'S LEAVE TO FILE REPLY AND ILLINOIS EPA'S REPLY** via the Board's COOL system and email, upon the following named persons:

Don Brown, Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph, Suite 11-500  
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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,  
Respondent



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