

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

BEVERLY POWERS )  
 f/d/b/a DICK'S SUPER SERVICE, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 )  
 Respondent. )

PCB No. 11-63  
(UST Appeal)

NOTICE

John T. Therriault  
 Assistant Clerk  
 Illinois Pollution Control Board  
 100 West Randolph Street, Suite 11-500  
 Chicago, Illinois 60601-3218

Robert M. Riffle  
 Elias, Meginnes, Riffle & Seghetti, P.C.  
 416 Main Street, Suite 1400  
 Peoria, IL 61602

Carol Webb  
 Hearing Officer  
 Illinois Pollution Control Board  
 1021 North Grand Avenue East  
 P.O. Box 19274  
 Springfield, IL 62794-9274

PLEASE TAKE NOTICE that I have today caused to be filed Respondent's MOTION TO STRIKE PETITIONER'S REPLY TO RESPONDENT'S POST-HEARING BRIEF with the Illinois Pollution Control Board, a copy of which is served upon you.

Respectfully submitted,


ILLINOIS ENVIRONMENTAL  
 PROTECTION AGENCY,

Dated: May 29, 2013

Respondent,

Scott B. Sievers  
 Attorney Registration No. 6275924  
 1021 North Grand Avenue East  
 P.O. Box 19276  
 Springfield, Illinois 62794-9276  
 (217) 782-5544

BY:

  
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 Scott B. Sievers  
 Special Assistant Attorney General



**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

BEVERLY POWERS	)	
f/d/b/a DICK'S SUPER SERVICE,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB No. 11-63
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

**MOTION TO STRIKE PETITIONER'S REPLY  
TO RESPONDENT'S POST-HEARING BRIEF**

NOW COMES the Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"), by and through its attorney, Special Assistant Attorney General Scott B. Sievers, and hereby moves this honorable Board to strike the Petitioner's Reply to Respondent's Post-Hearing Brief ("Petitioner's Reply"). In support, the Respondent states the following:

1. In the Reply to Respondent's Post-Hearing Brief, the Petitioner fails to reply to anything in Respondent's Closing Brief, but instead raises a new argument and submits a new document. The Petitioner asserts in the reply that Beverly Powers now has signed the Owner/Operator certification form at issue in the first of Illinois EPA's three reasons for rejecting the February 17, 2011 proposed budget amendment, and that the Petitioner has attached the signed form as Exhibit A to Petitioner's Reply.

2. This Board's review generally is limited to the record before the Illinois EPA at the time of its determination. *Freedom Oil Co. v. Illinois EPA*, PCB 10-46 at 13-14 (2012). "The Board will not consider new information that was not before the Agency prior to its final

determination regarding the issues on appeal.” *Id.*

3. The Petitioner’s Reply offers no explanation why Beverly Powers’ signature was absent from the Owner/Operator form attached to the October 21, 2010 proposed Corrective Action Budget Amendment and did not appear on such a form until more than two and a half years later. It also does not address why it took more than two years after the Petition for Review And Hearing/Appeal was filed for the signature to surface when this action was ostensibly brought by Beverly Powers herself, who presumably would have had ready access to her own signature.

4. Regardless, the Petitioner’s Reply asserts no authority for this Board to consider exhibits neither made part of the administrative record nor submitted into evidence at hearing or to hear arguments not raised in the Petition for Review And Hearing/Appeal or in the Post-Hearing Brief of Petitioner. Exhibit A to Petitioner’s Reply was not in the record before the Illinois EPA at the time of its determination, and therefore this Board should not consider it or that the Petitioner asserts that Beverly Powers now has signed the Owner/Operator form. *See id.* For this reason and because the Respondent’s Reply replies to nothing in the Respondent’s Closing Brief and instead only reargues the Petitioner’s case, this honorable Board should strike the Reply to Respondent’s Post-Hearing Brief, including Exhibit A.

WHEREFORE, the Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, prays that this honorable Board STRIKE the Petitioner's Reply to Respondent's Post-Hearing Brief.

Respectfully submitted,

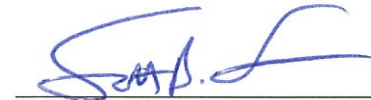
ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,

Respondent,

Dated: May 29, 2013

Scott B. Sievers  
Attorney Registration No. 6275924  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
(217) 782-5544

BY:



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Scott B. Sievers  
Special Assistant Attorney General

*Beverly Powers f/d/b/a Dick's Super Service v. Illinois Environmental Protection Agency*  
Pollution Control Board No. 11-63

CERTIFICATE OF SERVICE

Scott B. Sievers, Special Assistant Attorney General, herein certifies that he has served a copy of the foregoing **MOTION TO STRIKE PETITIONER'S REPLY TO RESPONDENT'S POST-HEARING BRIEF** upon:

John T. Therriault  
Assistant Clerk  
Illinois Pollution Control Board  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601-3218

Robert M. Riffle  
Elias, Meginnis, Riffle  
& Seghetti, P.C.  
416 Main Street, Suite 1400  
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Carol Webb  
Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
P.O. Box 19274  
Springfield, IL 62794-9274

by electronic service and by mailing true copies thereof to the addresses referred to above in envelopes duly addressed bearing proper first class postage and deposited in the United States mail at Springfield, Illinois, on May 29, 2013.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,

Dated: May 29, 2013

Scott B. Sievers  
Attorney Registration No. 6275924  
1021 North Grand Avenue East  
P.O. Box 19276  
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BY:



\_\_\_\_\_  
Scott B. Sievers  
Special Assistant Attorney General