

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS AYERS OIL CO.,)

Petitioner,)

v.)

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)

Respondent.)

PCB 03-214
(UST Appeal)

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STATE OF ILLINOIS
Pollution Control Board

NOTICE OF FILING AND PROOF OF SERVICE

TO: Dorothy Gunn, Clerk
Illinois Pollution Control Board
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PLEASE BE ADVISED THAT we are today filing with the Pollution Control Board by U.S. mail the original and nine copies of Response in Opposition to Motion for Leave to File Surreply, a copy of which is attached hereto.

The undersigned hereby certifies that a true and correct copy of this Notice of Filing, together with a copy of the document described above, were today served upon the hearing officer and counsel of record of all parties to this cause by enclosing same in envelopes addressed to such attorneys at their business addresses as disclosed by the pleadings of record herein, with postage fully prepaid, and by depositing same in the U.S. Mail in Springfield, Illinois on the 8th day of June, 2004.


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THIS FILING SUBMITTED ON RECYCLED PAPER

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RESPONSE IN OPPOSITION TO MOTION FOR LEAVE TO FILE SURREPLY

NOW COMES Petitioner, ILLINOIS AYERS OIL COMPANY, by its undersigned attorneys, pursuant to Section 101.500(d) of the Illinois Pollution Control Board's Procedural Rules (35 Ill.Admin.Code §101.500(d)), opposes the motion for leave to file surreply, stating as follows:

1. On or about June 2, 2004, the Illinois Environmental Protection Agency (hereinafter "the Agency") filed a motion for leave to file surreply.
2. The Agency accuses Petitioner of making three specific "material errors and misstatements" in its Reply, necessitating the Board's acceptance of the surreply (Motion, ¶2). The Agency relies upon the case of CDT Landfill Corporation v. City of Joliet, PCB 98-60 (Mar. 5, 1998) (granting motion to correct typographical errors in movant's own brief).
3. The allegation of "material errors and misstatements" is a serious accusation which is not substantiated in the Agency's motion.
4. First, the Agency claims that Petitioner erroneously alleged "that the Illinois EPA misinterpreted or misapplied the language of Section 57.8(l) of the Environmental Protection

Act... ” (Motion, ¶2(1)). If a disagreement with an interpretation of a statute constitutes a “material error and misstatement,” then those terms are essentially meaningless.

5. Second, the Agency alleges that the Petitioner erroneously alleged that “the case of Ted Harrison Oil Company v. Illinois EPA, PCB 99-127, provides no guidance in the present appeal (Petitioner’s Reply, p.8, Fn 2).” (Motion, ¶2(2)) Petitioner made no such accusation. In fact, Petitioner cited the Ted Harrison Oil Company case in its initial motion. In opposing the motion, the Agency argued for the creation of a distinction between reimbursement requests and actions involving plans and associated budgets. (Response, ¶16) In its Reply, Petitioner merely pointed out that the Ted Harrison Oil Company case involved a non-Title XVI program “and therefore does not provide any guidance as to what constitutes ‘the legal costs of seeking payment under this Title.’” (Reply, p.8 Fn 2)

6. Third, the Agency alleges that the Reply claims that “the only means for the Illinois EPA to reject excessive soil borings is in conjunction with the request for payment from the Underground Storage Tank Fund (“UST Fund”).” (Motion, ¶2(3)) “[T]his is an unsupported and extremely misleading statement, as it attempts to portray the Illinois EPA’s decision here to reduce the number of soil borings as one purely driven by reimbursement concerns.” (Surreply, pp. 3-4) Petitioner’s statement was fully supported and the accusatory tone belies a desire to reargue Petitioner’s conclusion, not to identify and correct any error of fact or law.

7. In summary, the Agency has mischaracterized and exaggerated allegations attributed to the Petitioner, engaged in reargument and otherwise failed to establish the existence of material errors and misstatements in the Reply Brief.

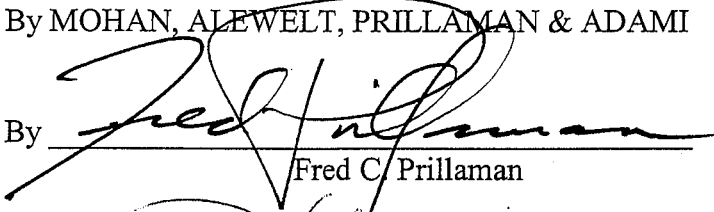
WHEREFORE, Petitioner, Illinois Ayers Oil Company, prays for an order denying the motion for leave to file surreply, and such other and further relief as the Board deems meet and just.

Respectfully submitted,

ILLINOIS AYERS OIL COMPANY, Petitioner

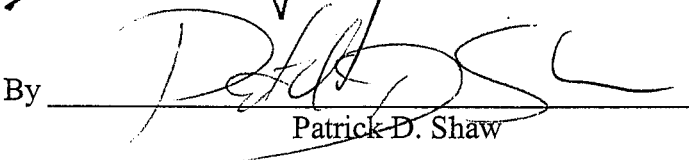
By MOHAN, ALEWELT, PRILLAMAN & ADAMI

By

A handwritten signature in dark ink, appearing to read "Fred C. Prillaman", written over a horizontal line.

Fred C. Prillaman

By

A handwritten signature in dark ink, appearing to read "Patrick D. Shaw", written over a horizontal line.

Patrick D. Shaw

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