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SEP 23 2004

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS AYERS OIL CO.,)

Petitioner,)

v.)

PCB 03-214
(UST Appeal)

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,)

Respondent.)

NOTICE OF FILING AND PROOF OF SERVICE

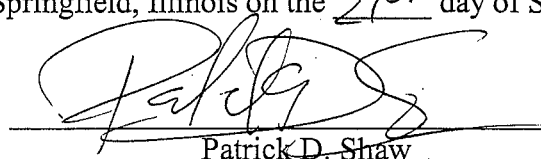
TO: Dorothy Gunn, Clerk
Illinois Pollution Control Board
100 West Randolph Street
State of Illinois Building, Suite 11-500
Chicago, IL 60601

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

John Kim
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

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 Reconsideration, 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 21st day of September, 2004.


Patrick D. Shaw

MOHAN, ALEWELT, PRILLAMAN & ADAMI
1 North Old Capitol Plaza, Suite 325
Springfield, IL 62701
Tel: (217) 528-2517
Fax: (217) 528-2553

THIS FILING SUBMITTED ON RECYCLED PAPER

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RESPONSE IN OPPOSITION TO MOTION FOR RECONSIDERATION

NOW COMES Petitioner, Illinois Ayers Oil Co., by its undersigned attorneys, pursuant to Section 101.520(b) of the Board's Procedural Rules (35 Ill.Admin.Code §101.520(b)), and responds as follows to the IEPA's Motion for Reconsideration:

1. In ruling upon a motion for reconsideration, the Board will consider factors including new evidence, or change in the law, to conclude that the Board's decision was in error. (35 Ill.Admin.Code §101.902).

2. Since the IEPA's motion does not present new evidence or a change in the law to indicate that the Board's decision was in error, the Board should deny the motion to reconsider. City of Kankakee v. County of Kankakee, PCB No. 03-125 (Oct. 16, 2003).

3. While the Board's procedural rules obligate the Board to consider new evidence or changes in the law (35 Ill.Admin.Code §101.902), the Board is not required to consider other reasons.

4. Where, as here, the IEPA simply readdresses arguments already considered and rejected by the Board, the Board should deny the motion for reconsideration. People v. Skokie Valley Asphalt, Co., PCB No. 96-98 (July 24, 2003).

5. In the event that the Board deems it appropriate to reconsider its ruling, Petitioner hereby reincorporates its previous filings. By asking the Board to construe the phrase “seeking payment” in isolation from all the provisions of the statutory enactment, the IEPA continues to ignore the proper analytical framework for construing statutes. Carver v. Sheriff of LaSalle County, 203 Ill.2d 497, 507 (2003). The Board correctly viewed Section 57.8(l) as a whole, in the context of the entirety of the Leaking Underground Storage Tank Program, and in light of the primary objectives of the aforementioned legislation. The legislative history also indicates that reimbursement of attorney fees was intended to be available under all provisions of the LUST Program. (Reply in Support of Motion for Attorney Fees, at p.7).

6. The bulk of the Agency’s argument, however, appears to be directed to the owner/operator who has wrongfully been denied approval of a Corrective Action Plan, but who has not evidenced a desire to seek reimbursement for corrective action costs. Petitioner is not this hypothetical individual and this hypothetical debate is better left to be addressed between parties who have an interest in its outcome. In any event, the Board is under no compulsion to award attorney fees in any strange, inequitable hypothetical suggested by the IEPA because the award is ultimately discretionary.¹

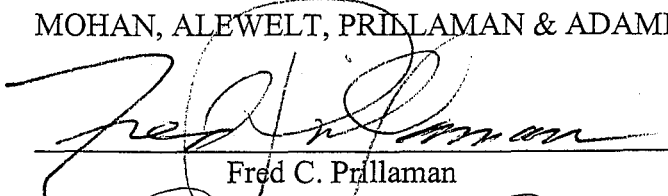
WHEREFORE, Petitioner, Illinois Ayers Oil Co., respectfully request that the Board deny the motion for reconsideration outright, and for such other and further relief as the Board deems meet and just.

¹ Petitioner does not necessarily agree that the hypothetical offered by the IEPA would reach an inequitable result. All we know about the hypothetical is that the IEPA was demonstrably proven to be wrong. We do not know the circumstances by which the Agency did not have knowledge of the owner/operator’s intent to seek reimbursement.

ILLINOIS AYERS OIL CO., Petitioner

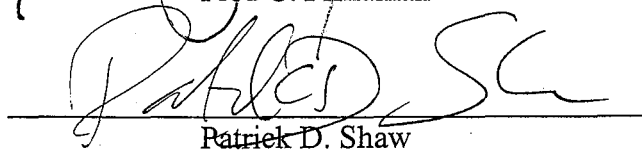
BY: MOHAN, ALEWELT, PRILLAMAN & ADAMI

BY:



Fred C. Prillaman

BY:



Patrick D. Shaw

MOHAN, ALEWELT, PRILLAMAN & ADAMI

1 North Old Capitol Plaza, Suite 325

Springfield, IL 62701

Phone: (217) 528-2517

Fax: (217) 528-2553

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