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**BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY: 38  
WASHINGTON, D.C.**

ENVIR. APPEALS BOARD

IN THE MATTER OF:	)	
	)	
CITY OF SPRINGFIELD	)	PSD APPEAL NO. 06-08
APPLICATION NO.: 04110050	)	
I.D. NO.: 167120AAO	)	

**NOTICE**

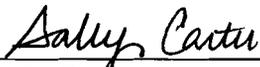
To:  
Eurika Durr, Clerk of the Board  
Environmental Appeals Board  
U.S. Environmental Protection Agency  
1341 G Street, N.W., Suite 600  
Washington, D.C. 20005

**SEE ATTACHED SERVICE LIST**

PLEASE TAKE NOTICE that I have today filed with the Clerk of the Environmental Appeals Board an original (1) and five (5) copies of the **MOTION FOR LEAVE TO FILE PARTIAL REPLY TO SIERRA CLUB'S RESPONSE TO DAVID MAULDING'S MOTION FOR LEAVE TO INTERVENE** and **PARTIAL REPLY TO SIERRA CLUB'S REPOSENSE TO DAVID MAULDING'S MOTION FOR LEAVE TO INTERVENE** of the Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, a copy of which is herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,

  
 \_\_\_\_\_  
 Sally Carter  
 Assistant Counsel  
 Division of Legal Counsel

Date: October 20, 2006

Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276  
217/782-5544

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APPLICATION NO.: 04110050	)	PSD APPEAL NO. 06-08
I.D. NO.: 167120AAO	)	
	)	

**MOTION FOR LEAVE TO FILE PARTIAL REPLY TO SIERRA CLUB'S  
RESPONSE TO DAVID MAULDING'S MOTION FOR LEAVE TO INTERVENE**

NOW COMES the Respondent, the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"), by and through its attorney, and files with the ENVIRONMENTAL APPEALS BOARD ("Board") this Motion for Leave to File Partial Reply to Sierra Club's Response to David Maulding's Motion for Leave to Intervene (hereinafter "Motion") filed by Petitioner, SIERRA CLUB, in the above-referenced cause.

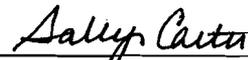
Petitioner argues that its Petition was timely filed with the Board as the pertinent regulation provides it with thirty-three days from the date of issuance to file a petition with the Board and, alternatively, the Illinois EPA's notice was "legally insufficient" as it did not provide the "final permit documents" to the public but rather notified commenters that these documents were "available either on the agency's website or by mail." See, Motion at pages 1-2. Petitioner's argument that the Illinois EPA's notice was "legally insufficient" was raised for the first time in Sierra Club's Response to David Maulding's Motion for Leave to Intervene and, as such, the Illinois EPA has not had the opportunity to respond to such allegation. In fact, Petitioner's latter argument can be read as a back-door attempt to raise an additional issue with the Board, i.e, the legal sufficiency of the Illinois EPA's notice, that has not been preserved for appeal.

The introduction of any additional rationale for appeal is plainly outside of the original filing requirements imposed by the Part 124 regulations. Petitions to review a PSD permit must be filed within 30 days of the Administrator's issuance of the final permit decision and any exception is reserved "for only the most extraordinary or compelling circumstances." 40 CFR §124.19(a); *see also, In re Georgetown Steel Corporation*, RCRA Appeal No. 91-1 at 5 (Adm'r June 10, 1991). For this reason, the Board has often been reluctant to review new points of concern after the 30-day filing deadline has passed. *See, In re Indeck-Elwood, LLC*, PSD Appeal No. 03-04, slip op. at 9 (February 3, 2004), *citing In re Rohm & Hass Co.*, 9 E.A.D. 499, 513 (EAB 2000); *In re Zion Energy, LLC.*, 9 E.A.D. 701, 707 (EAB 2001). This is especially true where the Petitioner's concerns were "reasonably ascertainable" at the time of the filing of the initial petition. *In re Rohm & Hass Co.*, 9 E.A.D. 499, 513 (EAB 2000).

In the event that the Board decides to entertain Petitioner's latter argument, due to the potential implications of this argument to the pending Construction Permit – PSD Approval and to any future notices of Construction Permit – PSD Approval issued by the Illinois EPA, the Illinois EPA requests leave of the Board to file the attached Partial Reply to Sierra Club's Response to David Maulding's Motion for Leave to Intervene to respond to the second part of Petitioner's argument.

Wherefore, the Illinois EPA respectfully requests that Board the grant the Respondent's Motion for Leave to File Partial Reply to Sierra Club's Response to David Maulding's Motion for Leave to Intervene or, in the alternative, order such relief that is deemed just and appropriate.

Respectfully submitted,  
ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,



\_\_\_\_\_  
Sally Carter  
Assistant Counsel  
Division of Legal Counsel

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