

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

PRIME LOCATION PROPERTIES, LLC, )  
Petitioner, )  
v. ) PCB No. 09-67  
ILLINOIS ENVIRONMENTAL ) (UST Appeal)  
PROTECTION AGENCY, )  
Respondent. )

RECEIVED  
CLERK'S OFFICE  
MAY 26 2009  
STATE OF ILLINOIS  
Pollution Control Board

NOTICE

John Therriault, Acting Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street, Suite 11-500  
Chicago, IL 60601

Fred C. Prillaman  
Patrick Shaw  
Mohan, Alewelt, Prillaman & Adami  
1 North Old Capitol Plaza, Suite 325  
Springfield, IL 62701-1323

Prime Location Properties, LLC  
Attn: Joe Keebler  
P.O. Box 242  
Carbondale, IL 62903

PLEASE TAKE NOTICE that I have today filed with the office of the Clerk of the Pollution Control Board an APPEARANCE and a MOTION TO DISMISS, copies of which are herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,  
Respondent



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THOMAS DAVIS  
Assistant Attorney General  
Attorney Reg. No. 3124200  
500 South Second Street  
Springfield, Illinois 62706  
217/782-7968

Dated: May 21, 2009



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**MOTION TO DISMISS**

NOW COMES the Respondent, the Illinois Environmental Protection Agency ("Illinois EPA"), by LISA MADIGAN, Attorney General of the State of Illinois, Thomas Davis, Assistant Attorney General, and, pursuant to 35 Ill. Adm. Code 101.500, hereby respectfully moves the Illinois Pollution Control Board ("Board") to dismiss the above action and in support of said motion, the Illinois EPA states as follows:

1. On March 9, 2009, Joe Keebler, property owner of Prime Location Properties, LLC filed a Petition on behalf of Prime Location Properties, LLC.
2. Joe Keebler is not registered as an attorney with the Attorney Registration and Disciplinary Commission.
3. On March 19, 2009, the Board issued an order directing the Petitioner to file an amended petition for review accompanied by the appearance of an attorney.
4. On April 20, 2009, Patrick Shaw, an attorney with Mohan, Alewelt, Prillaman & Adami, filed a Petition on behalf of Prime Location Properties, LLC.
5. April 20, 2009 is past the date by which an appeal needed to be filed in this case by an attorney for the appeal to be valid. The Illinois EPA decision was dated on January 27, 2009. Certified Mail shows that the decision was received on February 13, 2009. See Exhibit 1. The 35 day time frame for appeal in this case ended on March 20, 2009.

6. Further, Board rules clearly state that the petition for review must be filed by an attorney. 35 Ill. Adm. Code 101.400(a)(2). In its December 21, 2000 order in R00-20, the rulemaking adopting this regulatory provision the Board stated as follows:

The Board clarifies that a person must be a licensed attorney to appear before the Board on behalf of others in an adjudicatory proceeding. This contrasts with the Board's current procedural rule (see 35 Ill. Adm. Code 101.107), which generally allows officers or employees who are not attorneys to represent corporations in proceedings other than enforcement actions. The Board bases the new provision (see Section 101.400(a)(2)) in the Attorney Act (705 ILCS 205/1 *et seq.* (1998)), the Corporation Practice of Law Prohibition Act (705 ILCS 220/1 *et seq.* (1998)) and Illinois case law. In addition, the new provision is consistent with the recent line of Board decisions that found various activities in adjudicatory proceedings before the Board to constitute the practice of law. See, *e.g.*, *In re* Petition of Recycle Technologies, Inc. for an Adjusted Standard Under 35 Ill. Adm. Code 721.131(c) (July 10, 1997), AS 97-9.

7. Any judgment in a case initiated by a non-attorney is void, even if subsequent appearances are made by an attorney. See, *Housing Authority of Cook County v. Tonsul*, 115 Ill. App. 3d 739, 741 (1<sup>st</sup> Dist. 1983) (a cause prosecuted by a lay agent acting on behalf of a corporation is a nullity since it violates the rule against a corporation appearing "in any proceeding in any court through an agent who is not a licensed attorney").

8. A corporate party cannot file a valid notice of appeal in its own behalf without the advice and services of an attorney, and because the corporate party's notice of appeal was signed on behalf of the corporation by the secretary of the corporation, and did not indicate that counsel represented the corporation in the preparation and filing of the notice of appeal, the appeal would be dismissed. *Midwest Home Savings & Loan v. Ridgewood*, 123 Ill. App. 3d 1001, 1004 (5<sup>th</sup> Dist. 1984).

9. The petition for hearing before the Board to contest the decision of the Agency is filed pursuant to Section 40 of the Act. The Illinois Supreme Court in *ESG Watts, Inc. v. Pollution Control Board* (2000), 191 Ill. 2d 26, 30, held that a party seeking to invoke special statutory jurisdiction thus "must strictly adhere to the prescribed procedures" in the statute. Petitioner herein

has failed to do so.

10. Therefore, this case should be dismissed due to the fact that the initial filing was in violation of Board rules and it could not be cured by a filing of an attorney after the due date of the appeal had run.

**CONCLUSION**

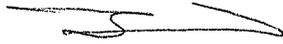
For the reasons stated herein, the Illinois EPA respectfully requests that the Board grant this Motion to Dismiss.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

LISA MADIGAN,  
Attorney General of the State of Illinois,

MATTHEW J. DUNN, Chief  
Environmental Enforcement/Asbestos  
Litigation Division

BY:   
THOMAS DAVIS, Chief  
Environmental Bureau  
Assistant Attorney General

Dated: May 21, 2009

This filing submitted on recycled paper.