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ILLINOIS POLLUTION CONTROL BOARD

PRIME LOCATION PROPERTIES,)
L.L.C.,)
Petitioner,)
vs.) PCB 09-67
ILLINOIS ENVIRONMENTAL) (LUST Appeal)
PROTECTION AGENCY,)
Respondent.)

Proceedings held on June 17, 2009, at 10:01 a.m., at the office of the Illinois Pollution Control Board, 1021 North Grand Avenue East, Springfield, Illinois, before Carol Webb, Hearing Officer.

Reported By: Karen Waugh, CSR, RPR
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APPEARANCES

MOHAN, ALEWELT, PRILLAMAN & ADAMI
BY: Mr. Patrick D. Shaw
Suite 325
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Springfield, Illinois 62701-1323
On behalf of Prime Location Properties, L.L.C.

OFFICE OF THE ATTORNEY GENERAL
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On behalf of the Illinois EPA

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BY: Ms. Melanie Jarvis
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PO Box 19276
Springfield, Illinois 62794-9276
On behalf of the Illinois EPA

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EXHIBITS

NUMBER

ENTERED

Exhibits Nos. 1 - 8

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1 PROCEEDINGS

2 (June 17, 2009; 10:01 a.m.)

3 HEARING OFFICER WEBB: Good morning. My
4 name's Carol Webb. This is the hearing for PCB 09-67,
5 Prime Location Properties versus IEPA. It is June 17,
6 2009, and we are beginning at ten o'clock a.m. For the
7 record, although Petitioner is located at 600 West 10th
8 Street in Metropolis, Massac County, there was no known
9 public interest in this case, so we are meeting here
10 today in Springfield. I will also note for the record
11 that there are no members of the public present to give
12 comment.

13 At issue in the case today is Petitioner's
14 contention that IEPA erred in concluding that the plan
15 relates to a new incident rather than the incident that
16 has been the subject of the remediation efforts and
17 reporting. The decision deadline in this case is
18 August 6. The Pollution Control Board members will make
19 the final decision in this case. My purpose is to
20 conduct the hearing in a neutral and orderly manner so
21 that we have a clear record of the proceedings. This
22 hearing was noticed pursuant to the Act and the Board's
23 rules and will be conducted pursuant to Sections 101.600
24 through 101.632 of the Board's procedural rules. At this

1 time I would like to ask the parties to please make their
2 appearances on the record.

3 MR. SHAW: Patrick Shaw for Prime Location
4 Properties.

5 HEARING OFFICER WEBB: Thank you.

6 MR. DAVIS: Thomas Davis, Illinois Attorney
7 General's Office, on behalf of the Illinois Environmental
8 Protection Agency, and with me is Melanie Jarvis, agency
9 counsel.

10 HEARING OFFICER WEBB: Thank you very much.
11 Are there any preliminary matters to discuss on the
12 record?

13 MR. DAVIS: Yes. The Agency has yet to
14 formally file the record in this case. I did receive
15 last week a disk with 42 documents. I will print that
16 out, and I do ask leave to file it formally with the
17 Board no later than next Monday, the 22nd of June.

18 HEARING OFFICER WEBB: Okay. Please do,
19 yes. Are there any other matters to discuss on the
20 record?

21 MR. SHAW: Yes. Just for the record,
22 Petitioner received a disk copy of the record here.

23 HEARING OFFICER WEBB: Excuse me a moment.
24 Did I hear somebody try to get in, or was that my

1 imagination? Okay. Wishful thinking on my part. I
2 apologize.

3 MS. JARVIS: Might be the fans.

4 HEARING OFFICER WEBB: Okay.

5 MR. SHAW: Petitioner received a CD-ROM of
6 the record here today at this hearing. Petitioner does
7 not waive objection to the tardiness of the record but
8 does believe that it should be in any event filed and
9 presented to the Board with that -- with the
10 understanding that the Petitioner is not waiving their
11 objection to the timeliness.

12 MR. DAVIS: And, sir, do you desire a hard
13 copy as well?

14 MR. SHAW: I do not desire a hard copy.
15 I'll try to save a few trees in this process.
16 Furthermore, Petitioner has identified and marked as
17 exhibits seven documents, which it is asking to be
18 submitted as exhibits to this hearing without a
19 sponsoring witness to them. It is Petitioner's
20 understanding that likely most of these documents are in
21 the CD-ROM file but, without having an opportunity to
22 look at it, is not sure, and with one caveat to
23 Exhibit 8, which is a printout of the Illinois
24 Environmental Protection Agency's computer records that

1 are available online for the internet -- on the internet.
2 This document's just being submitted as background
3 information on the history of the site. It's not being
4 admitted for the truth of the contents that essentially
5 are indexed on this document. It's for more of a limited
6 purpose than any other documents.

7 MR. DAVIS: Okay. In response, Ms. Hearing
8 Officer, Exhibits 1, 2, 3, 4, 6 and 7 would most likely
9 be in the administrative record. In any event, they're
10 either generated by consultants on behalf of the
11 Petitioner or actually business documents, if you will,
12 of the Illinois EPA, so we don't object to 1, 2, 3, 4, 6
13 and 7. I concur with the representation and expected use
14 of No. 8 and do not object. I would only note that
15 Exhibit No. 5 is also a business record. However, it's
16 probably not in the agency record. It is an Office of
17 State Fire Marshal form, and we do not object to that as
18 well. So no objection whatsoever to any of the
19 documents.

20 HEARING OFFICER WEBB: Okay. Thank you. I
21 would just like to clarify a few things for the Board.
22 Mr. Shaw was expecting a witness here this morning. We
23 were expected to begin at 9:30 a.m. The witness did not
24 appear. Mr. Shaw has attempted to reach the witness by

1 telephone and was unable to do so, so Mr. Shaw is
2 planning to proceed without the benefit of the witness on
3 the stand. So I just wanted to clarify that, so that's
4 why we're discussing. And also we have an unusual
5 instance where we're having a hearing where the
6 Petitioner's attorney has not reviewed -- had an
7 opportunity to review the administrative record, so this
8 hearing's a little unusual in those two respects. Is
9 that it for the procedural matters? Were there any other
10 items you wanted to discuss? I don't know if -- Did you
11 want to make an opening statement?

12 MR. SHAW: No, I don't think so.

13 HEARING OFFICER WEBB: Okay.

14 MR. SHAW: I'll reserve my statement to
15 the -- in the briefs.

16 HEARING OFFICER WEBB: All right.

17 Mr. Davis, did you care to make an opening statement?

18 MR. DAVIS: The only -- No, thank you.

19 However, I would just simply note in the transcript so
20 that the reader is apprised of procedural matters, we
21 have filed a motion to dismiss. We believe it was
22 timely, and apparently the Petitioner has filed a
23 response to that. However, due perhaps to a problem with
24 the U.S. mail, we did not actually receive a copy. The

1 certificate of service, Counsel has looked at it. It
2 appears proper. It appears like a hard copy was mailed
3 to the proper address. I just didn't receive it.

4 HEARING OFFICER WEBB: Okay. And I know
5 that is on the -- our online clerk's office. If you
6 wanted to print it off there, I believe it's already been
7 posted there as well.

8 MR. DAVIS: Thank you.

9 HEARING OFFICER WEBB: Well, I -- is there
10 anything -- I guess, Mr. Shaw, would you like to present
11 your exhibits? Do you have anything else you care to
12 present today?

13 MR. SHAW: Make sure we got -- 1, 2, 3, 4,
14 5, 6, 7, 8.

15 HEARING OFFICER WEBB: Okay. So we have
16 eight exhibits. None -- There is no objection by
17 Respondent to any of these exhibits; is that correct?

18 MR. DAVIS: That's correct.

19 HEARING OFFICER WEBB: Okay. So these
20 exhibits are all admitted. Is there anything else you'd
21 like to present at this time, Mr. Shaw?

22 MR. SHAW: Petitioner closes.

23 HEARING OFFICER WEBB: Okay. Well, then
24 I'll ask the Respondent, do you have anything you would

1 like to present --

2 MR. DAVIS: No, ma'am.

3 HEARING OFFICER WEBB: -- with respect to
4 this case?

5 MR. DAVIS: We will rely upon the record.

6 HEARING OFFICER WEBB: Okay. Well, the
7 expedited transcript will be due by June 22 and will be
8 posted on the Board's web site. The Petitioner's brief
9 is due by June 29 and the Respondent's brief is due by
10 July 6. The mailbox rule will not apply, and if the
11 parties file electronically, the briefs must be filed by
12 4:30 p.m. on the due date. If filing electronically,
13 please make sure that the clerk has received your brief.
14 If there's a problem with electronic filing on that
15 particular day, I authorize fax filing. The public
16 comment deadline is July 1. Any public comment must be
17 filed in accordance with Section 101.628 of the Board's
18 procedural rules. Mr. Shaw, would you like to make any
19 closing statement?

20 MR. SHAW: We'll reserve closing statement
21 for the briefs.

22 HEARING OFFICER WEBB: Mr. Davis?

23 MR. DAVIS: I'll take the same position.

24 HEARING OFFICER WEBB: Okay. If there is

1 nothing further from either party, we will conclude the
2 proceedings. We stand adjourned, and I thank all of you
3 for your participation.

4 (Hearing adjourned.)

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1 STATE OF ILLINOIS)
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2 COUNTY OF BOND)

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4 I, KAREN WAUGH, a Notary Public and Certified
5 Shorthand Reporter in and for the County of Bond, State
6 of Illinois, DO HEREBY CERTIFY that I was present at the
7 office of the Illinois Pollution Control Board,
8 Springfield, Illinois, on June 17, 2009, and did record
9 the aforesaid Hearing; that same was taken down in
10 shorthand by me and afterwards transcribed, and that the
11 above and foregoing is a true and correct transcript of
12 said Hearing.

13 IN WITNESS WHEREOF I have hereunto set my hand
14 and affixed my Notarial Seal this 17th day of June, 2009.

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Notary Public--CSR

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#084-003688

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