

ILLINOIS POLLUTION CONTROL BOARD
August 10, 2011

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STATE OF ILLINOIS
Pollution Control Board

ESTATE OF GERALD D. SLIGHTOM,)
)
Petitioner,)
)
v.) PCB 11-25
) (UST Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORIGINAL

HEARING OFFICER ORDER

Within the last six weeks, several motions have been filed that will be addressed in this order. The following facts do not appear to be in dispute. The Office of the State Fire Marshall (OSFM) issued an eligibility and determination letter on December 20, 1991, stating that the deductible for this incident was \$100,000. Mr. Slightom died in 2007, and on February 6, 2008, Mr. Slightom's estate received a letter from OSFM indicating that the deductible amount was \$10,000. Although petitioner attached the \$10,000 OSFM determination to its application, respondent's internal research located the \$100,000 determination letter. Respondent then applied the \$100,000 deductible to petitioner's application. Both OSFM determinations are part of the administrative record.

On June 16, 2011, the Agency filed a motion for summary judgment asserting that there are no genuine issues of material fact, and that the Agency is entitled to judgment as a matter of law. The question of law in this case appears to be which OSFM determination should apply. Petitioner has not responded to the motion for summary judgment, arguing that it cannot do so without deposing the Agency's project reviewer. The current decision deadline in this matter is November 17, 2011.

Petitioner makes various legal arguments in its motion to compel discovery which are more appropriately addressed in its response to the motion for summary judgment. Most relevant to the motion to compel, petitioner argues that deposing respondent's project reviewer is necessary to uncover details about the Agency's investigation of the earlier OSFM determination, and to address the validity and circumstances of the evidence. Petitioner does not assert that the 1991 determination is fraudulent. In this instance, there appears to be no ambiguity in the record that a deposition could clarify. The earlier determination was found and applied. Accordingly, petitioner's motion to compel is denied, and respondent's motion to quash the subpoena is granted. Petitioner may appeal this decision as part of its response to the motion for summary judgment.

Ruling on petitioner's request for additional time to respond to the Agency's motion for summary judgment is reserved, pending receipt of any additional waiver of the decision

deadline. At the next status conference, a deadline of September 12, 2011 will be discussed. As this case still has a November 17, 2011 decision deadline, petitioner will need to file at least a 180-day decision deadline waiver if hearing is to be delayed until after the Board rules on the motion for summary judgment. Additional waivers may still be needed.

The parties are reminded to participate in a telephone status conference with the hearing officer at 10:30 a.m. on August 23, 2011. The status conference shall be initiated by the petitioner.

IT IS SO ORDERED.



Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois 62794-9274
217/524-8509
webbc@ipcb.state.il.us

CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were mailed, first class on August 10, 2011, to each of the persons on the attached service list.

It is hereby certified that a true copy of the foregoing order was hand delivered to the following on August 10, 2011:

John T. Therriault
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Ste. 11-500
Chicago, Illinois 60601



Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois 62794-9274
217/524-8509
webbc@ipcb.state.il.us

PCB 2011-025
Patrick D. Shaw
Mohan, Alewelt, Prillaman & Adami
First of America Center
1 North Old State Capitol Plaza, Suite 325
Springfield, IL 62701-1323

PCB 2011-025
William Ingersoll
IEPA
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

PCB 2011-025
Melanie A. Jarvis
IEPA
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276