

ILLINOIS POLLUTION CONTROL BOARD

June 6, 1996

KATHE'S AUTO SERVICE CENTER,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 96-102
	)	(UST - Reimbursement)
	)	
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by J. Yi):

On November 11, 1995, Kathe’s Auto Service Center (Petitioner) filed a petition for review appealing the Illinois Environmental Protection Agency’s (Agency) final reimbursement decision concerning Petitioner’s leaking underground storage tanks pursuant to Sections 57.8(i) and 40(a) of the Environmental Protection Act (Act). Petitioner’s facility is located at 835 Milwaukee Avenue, Glenview, Illinois. This matter is before the Board pursuant to several motions and filings made by the parties in the last couple of months. The focus of the filings are cross-motions for summary judgment. The Board’s order today will address several of the preliminary motions. The Board will rule on the cross-motions for summary judgment in a subsequent Board order.

PROCEDURAL HISTORY

On April 5, 1996 the Agency filed a motion for summary judgment and a motion to consolidate this matter with PCB 96-52, Raleigh Realty Corporation v. Illinois Environmental Protection Agency. Raleigh Realty Corporations’ facility is located at 11501 S. Kedzie Merrionette Park, Illinois.<sup>1</sup>

On April 15, 1996, Petitioner filed a cross-motion for summary judgment, a response brief to the Agency’s motion for summary judgment, a motion to file in excess of the fifteen (15) page limitation its cross-motion for summary judgment and response to the Agency’s motion for summary judgment, a motion to stay the Agency’s motion for summary judgment and a motion to adopt Raleigh Realty Corporation’s motion to deny the Agency’s motion to consolidate these matters.<sup>2</sup>

<sup>1</sup> The Agency’s motion for summary judgment will be referenced to as “Ag. SJ at .”.

<sup>2</sup> The Petitioner’s cross-motion for summary judgment will be referred to as “Pet. SJ at .”, the Petitioner’s response to the Agency’s Motion for summary judgment will be referenced

On April 29, 1996, the Agency filed a response to Petitioner's motions to deny the Agency motion to consolidate and Petitioner's motion to stay the Agency's motion for summary judgment, a motion for leave to file a reply to Petitioner's motion for summary judgment, a motion to strike Petitioner's response brief to the Agency's motion for summary judgment and an objection to the Petitioner's motion to file both its response brief to the Agency's motion for summary judgment and its motion for summary judgment in excess of the fifteen (15) page limitation.<sup>3</sup> On April 30, 1996 Petitioner filed a response to the Agency's motion to strike.

On May 2, 1996, Petitioner filed a response to the Agency's motion to strike Petitioner's response brief to the Agency's motion for summary judgment; a response to the Agency's responses to Petitioner's motion to deny the Agency's motion to consolidate; a response to the Agency's response to Petitioner's motion to stay the Agency's motion for summary judgment; a response to the Agency's motion to strike Petitioner's motion to deny the Agency's motion to consolidate; a response to the Agency's objection to the Petitioner's motion to file its motion for summary judgment in excess of the 15 page limitation and a response to the Agency's motion for leave to file a reply brief to the Petitioner's response to the Agency's motion for summary judgment. Also on May 2, 1996, the Agency filed a motion to file its response to the Petitioner's motion for summary judgment in excess of the 15 page limitation and its response.<sup>4</sup>

On May 8, 1996, Petitioner filed a motion to file its reply brief in support of its motion for summary judgment instanter and its reply brief.

On May 28, 1996, the parties filed a joint motion withdrawing several of the motions pending before the Board. The parties state that the Petitioner withdraws the following motions filed on April 15 and May 2:

- Motion to stay the Agency's motion for summary judgment;
- Response to the Agency's motion to strike Petitioner's response brief to the Agency's motion for summary judgment;
- Response to the Agency's responses to Petitioner's motion to deny the Agency's motion to consolidate;

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to as "Pet. Resp. to Ag. SJ at .", and Petitioner's motion to file in excess of the 15 page limitation will be referred to as "Pet. Excess at .".

<sup>3</sup> The Agency's motion to file a reply to the Petitioner's response to the Agency's motion for summary judgment will be referenced to as "Ag. Mot. to Reply at .".

<sup>4</sup> The Agency's motion to file its response to Petitioner's motion for summary judgment in excess of the 15 page limitation will be referred to as "Ag. Excess at .".

- Response to the Agency's response to Petitioner's motion to stay the Agency's motion for summary judgment;
- Response to the Agency's motion to strike Petitioner's motion to deny the Agency's motion to consolidate;
- Response to the Agency's objection to the Petitioner's motion to file its motion for summary judgment in excess of the 15 page limitation; and
- Response to the Agency's motion for leave to file a reply brief to the Petitioner's response to the Agency's motion for summary judgment.

The parties also state that the Agency withdraws the following filed on April 29:

- Motion to strike Petitioner's response to the Agency's motion for summary judgment;
- Response to Petitioner's motion to stay;
- Response to Petitioner's motion to deny Agency's motion to consolidate;
- Motion to strike Petitioner's motion to deny the Agency's motion to consolidate; and
- Objection to Petitioner's motion to file its cross-motion for summary judgment and response to the Agency's motion for summary judgment in excess of 15 pages.

### DISCUSSION

On May 2, 1996, the Board denied the Agency's motions to consolidate and strike, therefore the above mentioned filings associated with the Agency's motion to consolidate has been addressed. The Board grants the parties' May 28 joint motion to withdraw various filings.<sup>5</sup> This order will address the remaining, outstanding motions except for the Agency's motion for summary judgment and Petitioner's cross-motion for summary judgment.

On April 15, 1996, Petitioner filed a motion to file its cross-motion for summary judgment and its response to the Agency's motion for summary judgment in excess of the 15 page limitation set forth at 35 Ill. Adm. Code 101.104. Petitioner states that it is requesting relief from the 15 pages limitation because the issues and arguments being made by the Agency in its motion for summary judgment and the basis for denial contained in the Agency's denial letter are numerous. (Pet. Excess at 2.)

The Board grants Petitioner's motion to file its cross-motion for summary judgment and its response to Agency's motion for summary judgment in excess of the 15 page limitation. We find that the issues involved required the Petitioner to file in excess of the 15 page limitation in order to fully represent its position and the facts.

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<sup>5</sup> The Board notes its concern with the parties' use of motion practice in this instance. Although the Board invites all appropriate motions, as these may have been, all practitioners before the Board should be aware that frivolous motion practice will not be tolerated and may result in sanctions.

The Agency filed a motion for leave to file a reply to Petitioner's response to the Agency's motion for summary judgment on April 29, 1996. The Agency states for various reasons enumerated in its motion that it "would be greatly prejudiced if it was not permitted or allowed to address the factual and legal issues raised by the Petitioner in its Response Brief". (Ag. Mot. to Reply at 2.)

The Board denies the Agency's motion to reply to Petitioner's Response to the Agency's motion for summary judgment. The parties have fully addressed the issues before the Board in both the motions for summary judgment and responses and no prejudice would exist if the Board were to rule on the Agency's motion for summary judgment without further briefing.

On May 2, 1996, the Agency filed its response to the Petitioner cross-motion for summary judgment and a motion to file its response in excess of the 15 page limitation. The Board grants the Agency's motion to file in excess of the page limitation.

On May 8, 1996 Petitioner filed a motion to file a reply brief in support of its cross-motion for summary judgment. Petitioner states that the Agency raised several new arguments in its response to Petitioner motion such that Petitioner will be prejudiced if it is not allowed to file a reply. The Board, for the same reasons it denied the Agency's motion to file a reply to Petitioner's response to Agency's motion for summary judgment, we deny Petitioner motion to file a reply. Therefore, the remaining issues currently before the Board which will be considered in a pending order of the Board are defined by the motions for the summary judgment and corresponding responses.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the \_\_\_\_\_ day of \_\_\_\_\_, 1996, by a vote of \_\_\_\_\_.

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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board