## ILLINOIS POLLUTION CONTROL BOARD May 2, 1996

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

## ORDER OF THE BOARD (by J. Yi):

On November 11, 1995, Kathe's Auto Service Center (Kathe Auto) filed a petition appealing the Illinois Environmental Protection Agency's (Agency) final reimbursement decision concerning Kathe Auto's leaking underground storage tanks pursuant to Sections 57.8(i) and 40(a) of the Environmental Protection Act (Act). Kathe Auto's facility is located at 835 Milwaukee Avenue, Glenview, Illinois.

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 Reality Corporations' facility is located at 11501 S. Kedzie Merrionette Park, Illinois. On April 15, 1996, Kathe Auto 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.

On April 29, 1996 the Agency filed a motion to strike the Kathe Auto's response to the motion to consolidate. The Agency argues that the Board should strike the response as being untimely pursuant to 35 Ill. Adm. Code 101.241(b). The Agency states that it personally served Kathe Auto on April 5, 1996 causing the effective date of service to be April 5, 1996. Thus, pursuant to Section 101.241(b) which allows for responses to be filed within seven (7) days of service of a motion, the Agency contends the response was due on April 12, 1996. The Agency asserts that since Kathe Auto hand-delivered the response to the Clerk of the Board on April 15, 1996 it is late. The Agency requests the Board to strike the response and deem any objection to the motion to consolidate waived. On April 30, 1996 Kathe Auto filed a response to the Agency's motion to strike. Kathe Auto states that it did not receive the motion to consolidate until April 8, 1996, thereby making its response timely.

In this order the Board will only address the Agency's motions to consolidate and strike Kathe Auto's response, and Kathe Auto's motion to adopt Raleigh Realty Corporation's

motion to deny the Agency's motion to consolidate these matters and response to motion to strike. We deny the Agency's motions to strike and consolidate. We grant Kathe Auto's motion to adopt Raleigh Realty Corporation's motion to deny the Agency's motion to consolidate.

The Agency argues that the Board should consolidate these matters in the interest of convenient, expeditious and complete resolution. In support of its motion the Agency states that the issues are identical, Kathe Auto utilized the same environmental consultant, and the Board's hearing officer and attorneys are the same. Kathe Auto opposes the motion asserting that it is only appropriate to consolidate two separate causes of action where they are the same in nature, arise from the same act or event, involve the same or like issue, and depend largely on the same evidence. Kathe Auto contends that this is not the case here. Furthermore Kathe Auto states that neither the Illinois Rules of Civil Procedure nor Board procedural rules permit the consolidation of motions for summary judgment brought by different parties in different matters. Kathe Auto argues that it would be greatly prejudiced if the matters were consolidated, as the facts involve two different petitioners, two different gasoline stations, two different Agency denial letters and associated records. While some of the facts of the two cases are essentially the same, Kathe Auto believes consolidation will cause confusion and complicate the pleadings, hearings and rulings.

The Board denies the Agency's motions to consolidate and strike. While the Board is appreciative of the intent of conserving resources of all parties, due to the numerous filings in these cases, the differences of the fact situations and the possible confusion which may result, the Board does not find it appropriate to consolidate these matters.

## IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the the above order was adopted on the	Illinois Pollution day of	
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	Dorothy M. Gunn, Clerk Illinois Pollution Control Board	