

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

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CLERK'S OFFICE

JUL 28 2003

MAIN STATION,)
)
) Petitioner,)
)
) v.)
)
) ILLINOIS ENVIRONMENTAL)
)
) PROTECTION AGENCY,)
)
) Respondent.)

PCB No. 03-87
(UST Appeal)

STATE OF ILLINOIS
Pollution Control Board

NOTICE

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601


Curtis Martin
Shaw & Martin, P.C.
123 South Tenth Street
Suite 302
P.O. Box 1789
Mt. Vernon, IL 62864

Carol Sudman, Hearing Officer
Illinois Pollution Control Board
600 South Second Street
Suite 402
Springfield, IL 62704

PLEASE TAKE NOTICE that I have today filed with the office of the Clerk of the Pollution Control Board a MOTION TO STRIKE PORTION OF THE ADMINISTRATIVE RECORD, copies of which are herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent



John J. Kim
Assistant Counsel
Special Assistant Attorney General
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)
Dated: July 23, 2003

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v.)
ILLINOIS ENVIRONMENTAL)
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MOTION TO STRIKE PORTION OF THE ADMINISTRATIVE RECORD

NOW COMES the Respondent, the Illinois Environmental Protection Agency ("Illinois EPA"), by one of its attorneys, John J. Kim, Assistant Counsel and Special Assistant Attorney General, and, pursuant to 35 Ill. Adm. Code 101.500 and 101.502, hereby requests that the assigned Hearing Officer or the Illinois Pollution Control Board ("Board") strike a portion of the Administrative Record ("record") filed in this matter by the Petitioner. In support of this motion, the Illinois EPA states as follows:

1. The Petitioner, Main Station, filed its appeal on or about March 17, 2003. Since that time, the parties have engaged in a number of discussions regarding the subject matter of the appeal and whether a hearing on the merits would be necessary.
2. On June 10, 2003, the Hearing Officer issued a notice of hearing for this appeal in case the parties eventually determined such a hearing would be necessary.
3. Based on discussions between the parties during the latter part of the week of July 14, 2003, it was determined that a hearing would be needed. On July 21, 2003, the Illinois EPA filed, via overnight mail delivery, the record in this case.
4. However, in the course of the Illinois EPA's expedited preparation of the record, a letter was errantly included in the record. The letter is found on pages 7 through 10 of the record and is dated November 20, 2002.

5. The decision under appeal in this matter is dated November 12, 2002, and is found at pages 1 through 3 of the record. It is well-established that evidence or documents that were not before the Illinois EPA at the time of the decision under appeal should not be admitted at hearing or considered by the Board. Community Landfill Company and City of Morris v. Illinois EPA, PCB 01-48, 01-49 (consolidated), April 5, 2001. The hearing will be based exclusively on the record that was before the Illinois EPA at the time the decision was issued. Id. In this case, the letter dated November 20, 2002, was issued eight days after issuance of the decision under appeal, and therefore could not possibly have been before the Illinois EPA at the time of the decision under review. Further, there has been no appeal filed of that decision dated November 20, 2002, and therefore any discussion or arguments thereto would be inappropriate.

6. The Illinois EPA regrets the erroneous inclusion of this document in the record, but that mistake aside, the document nonetheless should not be considered as part of the record and should accordingly not be the subject of testimony elicited at the hearing and the Board's consideration of this appeal. Accordingly, the Illinois EPA respectfully requests that the Hearing Officer or the Board strike pages 7 through 10 of the record.

WHEREFORE, for the reasons stated above, the Illinois EPA hereby respectfully requests that the Hearing Officer or the Board strike pages 7 through 10 of the record as the document found on those pages post-dates the decision under appeal and was not before the Illinois EPA at the time of its decision and no appeal has been taken of the document found on those pages.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

Respondent



John J. Kim

Assistant Counsel

Special Assistant Attorney General

Division of Legal Counsel

1021 North Grand Avenue, East

P.O. Box 19276

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Dated: July 23, 2003

This filing submitted on recycled paper.

CERTIFICATE OF SERVICE


I, the undersigned attorney at law, hereby certify that on July 23, 2003, I served true and correct copies of an ADMINISTRATIVE RECORD, by placing true and correct copies in properly sealed and addressed envelopes and by depositing said sealed envelopes in a U.S. mail drop box located within Springfield, Illinois, with sufficient First Class postage affixed thereto, upon the following named persons:

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
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Chicago, IL 60601

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