

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

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STATE OF ILLINOIS
Pollution Control Board

ST. FRANCIS PET CREMATORY &)	
KENNELS, INC., an Illinois Corporation,)	
Petitioner,)	
v.)	PCB No. 06-13
ILLINOIS ENVIRONMENTAL)	(Permit Appeal)
PROTECTION AGENCY,)	
Respondent.)	

NOTICE

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

Bradley P. Halloran, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

Ann T. Dempsey
Oliver, Close, Worden,
Winkler & Greenwald LLC
124 North Water Street, Suite 300
P.O. Box 4749
Rockford, IL 61110-4749

PLEASE TAKE NOTICE that I have today filed with the office of the Clerk of the Pollution Control Board a MOTION FOR ORDER OF PROTECTION, 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: September 2, 2005

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ST. FRANCIS PET CREMATORY &)	
KENNELS, INC., an Illinois Corporation,)	
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MOTION FOR ORDER OF PROTECTION AND PRIVILEGE LOG

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 hereby presents the Hearing Officer with the following motion for order of protection for documents from disclosure and accompanying privilege log. In support of this motion for order of protection, the Illinois EPA provides as follows.

1. Exhibits 1 and 2 in the privilege log are memoranda between an in-house Illinois EPA attorney and the manager of the Illinois EPA's Bureau of Land Permit Section.
2. As such, the documents are attorney-client communications and attorney work product prepared in anticipation of litigation. Neither of the documents has been disseminated to the general public, and both were generated as part of the internal review process of the Illinois EPA. The documents are protected from disclosure by the attorney-client privilege and the attorney work product privilege.
3. Exhibits 3 through 6 are reviewer notes, in both redacted and unredacted form, which make specific reference to Exhibits 1 and 2 and the content therein as well as other comments received from in-house counsel. The redacted information cites to or paraphrases information contained in Exhibits 1 and 2 and other comments from in-house counsel, and the redacted pages are included within the Administrative Record.

4. Group Exhibit 4 consists of a letter sent from counsel for the Petitioner to the Illinois EPA on December 31, 2004, a letter sent from the Illinois EPA to Petitioner's counsel on July 30, 2005, and the documents which were the subject of those pieces of correspondence. The documents represent a request by the Petitioner that the Illinois EPA withhold from public disclosure certain information within the permit application that the Petitioner argued was proprietary and confidential. The Illinois EPA agreed with the request, and has since withheld those documents.

5. For these reasons, and the reasons more specifically provided below, the Illinois EPA seeks an order of protection from the Hearing Officer, deeming that the documents be withheld from disclosure.

6. Privilege Log (Documents below are provided only to Hearing Officer for in-camera review):

<u>Exhibit #</u>	<u>Document description</u>	<u>Justification for protection from disclosure</u>
1.	3/30/05 memo	Memorandum from Mark Wight of the Illinois EPA's Division of Legal Counsel ("DLC") to Joyce Munie of Illinois EPA's permit section; DLC's analysis and arguments regarding the need for proof of local siting approval by the Petitioner.
2.	6/27/05 memo	Memorandum from Mark Wight of the Illinois EPA's Division of Legal Counsel ("DLC") to Joyce Munie of Illinois EPA's permit section; DLC's analysis and arguments regarding the need for proof of local siting approval by the Petitioner.
3.	Undated notes	Reviewer notes of Beverly Albarracin; cites to and references content of Mark Wight's 3/30/05 memorandum.
4.	Undated notes	Redacted version of Exhibit #3 as found on page 5 of the Administrative Record.
5.	Undated notes	Reviewer notes of Beverly Albarracin; cites to and references comments from William (Bill) Ingersoll of DLC

and includes analysis that also references Mr. Ingersoll's comments.

6. Undated notes Redacted version of Exhibit #5 as found on page 7 of the Administrative Record.
7. Letters/exhibits Correspondence between counsel for the Petitioner and the Illinois EPA regarding exemption from public disclosure request.

7. For the reasons stated herein, the Illinois EPA hereby respectfully requests that the Hearing Officer enter an order of protection, preventing the above-described documents from disclosure through inclusion in the Administrative Record and discovery in the present appeal.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent



John J. Kim
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217/782-5544
217/782-9143 (TDD)
Dated: September 2, 2005

This filing submitted on recycled paper.

CERTIFICATE OF SERVICE


I, the undersigned attorney at law, hereby certify that on September 2, 2005, I served true and correct copies of a MOTION FOR ORDER OF PROTECTION, by placing true and correct copies thereof 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
Suite 11-500
Chicago, IL 60601

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