

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

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DEC 02 2005

STATE OF ILLINOIS
Pollution Control Board

WILLIAM BREUER,

Petitioner,

vs.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

PCB No. 06-25
(UST Appeal)

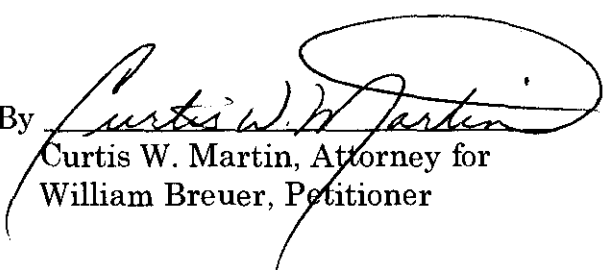
NOTICE

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

John J. Kim
Assistant Counsel
Special Assistant Attorney General
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, IL 62794-9276

PLEASE TAKE NOTICE that I have today filed with the office of the Clerk of the Pollution Control Board a Motion for Sanctions, a copy of which is herewith served upon you.

By


Curtis W. Martin, Attorney for
William Breuer, Petitioner

Robert E. Shaw
IL ARDC No. 03123632
Curtis W. Martin
IL ARDC No. 06201592
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MOTION FOR SANCTIONS

NOW COMES the Petitioner, William Breuer ("Breuer"), by one of his attorneys, Curtis W. Martin of Shaw & Martin, P.C., for his Motion for Sanctions, pursuant to 35 Ill. Adm. Code 101.800, states as follows:

1. On August 12, 2005, Breuer timely filed a Petition for Review of Final Agency Leaking Underground Storage Tank Decision requesting the Illinois Pollution Control Board ("Board") to review a July 6, 2005 determination of the Illinois Environmental Protection Agency ("Agency") pursuant to 415 ILCS 5/40(a)(1) and 35 Ill. Adm. Code 105.402.

2. On September 20, 2005, Breuer filed a Motion to Amend Petition for Review of Final Agency Leaking Underground Storage Tank Decision which Motion was granted by the Board by Order of October 6, 2005.

3. As a result of the filing of the Amended Petition on September 20, 2005, the Board by its October 6, 2005 Order extended the statutory decision deadline to January 18, 2006.

4. By Hearing Officer Order of September 22, 2005, the hearing on Breuer's Amended Petition was tentatively set for October 28, 2005, and was officially noticed for hearing by the Hearing Officer on October 5, 2005 for October 28, 2005.

5. 35 Ill. Adm. Code 105.410 requires the Agency to file the entire record of its decision with the Board in accordance with 35 Ill. Adm. Code 105.116.

6. 35 Ill. Adm. Code 105.116 requires the Agency to file with the Board the entire record of its decision within 30 days after the filing of the Petition for Review, unless otherwise provided by Rule or by the Board or Hearing Officer. The Agency may seek additional time within which to file the record, but such request must be filed with the Board before the date on which the record is due to be filed.

7. Since Breuer's Amended Petition was filed September 20, 2005, as noted by the Board's Order of October 6, 2005, the Agency was required to file with the Board the record on or before October 20, 2005, as the Agency did not seek additional time within which to file the record and no other rule, nor the Board or the Hearing Officer provided for a different filing date.

8. As a result of the Agency's failure to timely file the record with the Board, Breuer requested and received a continuance of the hearing set for October 28, 2005 and the hearing was reset for December 1, 2005.

9. As of the filing of this Motion, the Agency has not yet filed the record with the Board.

10. Breuer cannot adequately prepare for the hearing on his Amended Petition set for December 1, 2005 without the record.

11. Even if the record were filed as of the date of this Motion, Breuer would have insufficient time within which to adequately prepare for the hearing on the Amended Petition set for December 1, 2005.

12. Contemporaneously with this Motion, Breuer has filed a Motion to Continue the hearing set for December 1, 2005.

13. The statutory decision deadline with regard to Breuer's Amended Petition remains January 18, 2006.

14. 35 Ill. Adm. Code 105.118 provides that if the Agency unreasonably fails to timely file the record on or before the date required under the Sections referenced above, the Board may sanction the Agency in accordance with 35 Ill. Adm. Code 101.Subpart H.

15. 35 Ill. Adm. Code 101.Subpart H consists of 35 Ill. Adm. Code 101.800 entitled "Sanctions for Failure to Comply with Procedural Rules, Board Orders, or Hearing Officer Orders."

16. In particular, 35 Ill. Adm. Code 101.800(a) provides that if any person unreasonably fails to comply with any provision of 35 Ill. Adm. Code 101 through 130, the Board may order sanctions upon its own motion or in response to a motion by a party.

17. In light of the Agency's unreasonable failure to comply with 35 Ill. Adm. Code 105.410 and 105.116 in not timely filing the record with the Board, this Board should order sanctions against the Agency pursuant to this Motion.

18. 35 Ill. Adm. Code 101.800(b)(4) provides in part that a Judgment by default may be entered against the offending person.

19. 35 Ill. Adm. Code 101.800(c) provides that in deciding which sanction to impose the Board is to consider factors such as the relative severity of the failure to comply, the past history of the proceeding, and the degree to which the proceeding has been delayed or prejudiced.

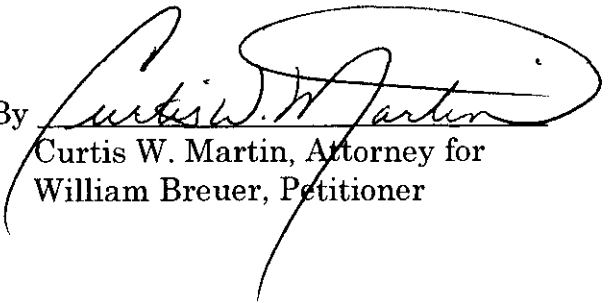
20. Breuer has not been able to adequately prepare for and present its Amended Petition without the timely filed record, the Agency has more than once failed to timely file the record, and the proceedings have been delayed to Breuer's prejudice.

21. As a sanction against the Agency, Breuer requests this Board grant Breuer a Judgment by default in accordance with the request in his Amended Petition.

WHEREFORE, Petitioner, William Breuer, prays that this Board grant him a Judgment by default in accordance with his request in his Amended Petition for Review of Final Agency Leaking Underground Storage Tank Decision filed September 20, 2005, including the approval of Breuer's Third Amended High Priority Corrective Action Plan and Budget and the recovery of his attorney's fees and costs incurred pursuant to 415 ILCS 5/57.8(l) and 35 Ill. Adm. Code 732.606(l),

and that he have such other and further relief as this Board deems just and proper under the circumstances.

SHAW & MARTIN, P.C.

By  Curtis W. Martin, Attorney for
William Breuer, Petitioner

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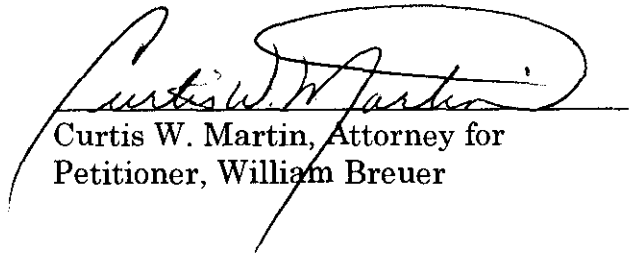
CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on November 29, 2005, I served true and correct copies of the Motion for Sanctions, by placing a true and correct copy in properly sealed and addressed envelopes and by depositing said sealed envelopes in a U.S. mail drop box located within Mt. Vernon, Illinois, with sufficient postage affixed thereto, upon the following named persons:

Dorothy M. Gunn, Clerk
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Suite 11-500
Chicago, IL 60601

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Special Assistant Attorney General
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Curtis W. Martin, Attorney for
Petitioner, William Breuer