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STATE OF ILLINOIS
Pollution Control Board
ORIGINAL

**BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS**

ESTATE OF GERALD D. SLIGHTOM,
Petitioner,

v.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent.

PCB 11-25
(UST Appeal)

NOTICE

John Therriault, Acting Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
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Chicago, IL 60601

Carol Webb, Hearing Officer
Illinois Pollution Control Board
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Patrick Shaw
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1 North Old Capitol Plaza, Suite 325
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PLEASE TAKE NOTICE that I have today, on behalf of the Illinois Environmental Protection Agency, filed with the office of the Clerk of the Pollution Control Board an OBJECTION TO PETITIONER'S MOTION TO COMPEL and an OBJECTION TO PETITIONER'S MOTION FOR EXTENSION OF TIME, copies of which are herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent

Melanie A. Jarvis
Assistant Counsel
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217/782-5544
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Dated: July 8, 2011

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

ESTATE OF GERALD D. SLIGHTOM, Petitioner, v. ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, Respondent.	))))))))	PCB 11-25 (UST Appeal)

ORIGINAL

OBJECTION TO PETITIONER'S MOTION TO COMPEL

NOW COMES the Respondent, the Illinois Environmental Protection Agency ("Illinois EPA"), by one of its attorneys, Melanie A. Jarvis, Assistant Counsel and Special Assistant Attorney General, and, pursuant to 35 Ill. Adm. Code 101.500, 101.502, 101.616, and 101.622 hereby respectfully moves the Illinois Pollution Control Board ("Board") to DISMISS or in the alternative DENY the Petitioner's Motion to Compel Deposition. In support of said motion, the Illinois EPA states as follows:

I. APPLICABLE FACTS

1. The Petitioner filed an appeal of the Illinois EPA's October 29, 2010, decision on December 6, 2010, and amended its Petition on January 12, 2011.
2. Petitioner's consultant, through Freedom of Information Act ("FOIA"), received the entire Illinois EPA file regarding this case in December 2010.
3. The Illinois EPA filed the Administrative Record and a Motion for Summary Judgment on June 15, 2011.
4. The Administrative Record filed in this case consists of the entire Fiscal File regarding this site, which was received by Petitioner within both its FOIA request and when the Illinois EPA filed its Administrative Record.
5. On June 24, 2011, counsel for Petitioner sent Illinois EPA's counsel an e-mail requesting a deposition of a member of Illinois EPA staff.

6. On June 24, 2011, counsel for the Illinois EPA responded via e-mail that the Illinois EPA would object to any discovery in the case, in part, because the Illinois EPA had already filed the record and it's Motion for Summary Judgment.

II. APPLICABLE LAW

Section 101.616 Discovery

The assigned hearing officer will set all time deadlines for discovery not already provided for in this Subpart consistent with Board deadlines. For purposes of discovery, the Board may look to the Code of Civil Procedure and the Supreme Court Rules for guidance where the Board's procedural rules are silent (see Section 101.100(b)). All discovery disputes will be handled by the assigned hearing officer.

a) All relevant information and information calculated to lead to relevant information is discoverable, excluding those materials that would be protected from disclosure in the courts of this State pursuant to statute, Supreme Court Rules or common law, and materials protected from disclosure under 35 Ill. Adm. Code 130.

b) If the parties cannot agree on the scope of discovery or the time or location of any deposition, the hearing officer has the authority to order discovery or to deny requests for discovery.

c) All discovery must be completed at least 10 days prior to the scheduled hearing in the proceeding unless the hearing officer orders otherwise.

d) The hearing officer may, on his or her own motion or on the motion of any party or witness, issue protective orders that deny, limit, condition or regulate discovery to prevent unreasonable expense, or harassment, to expedite resolution of the proceeding, or to protect non-disclosable materials from disclosure consistent with Sections 7 and 7.1 of the Act and 35 Ill. Adm. Code 130.

e) Unless a claim of privilege is asserted, it is not a ground for objection that the testimony of a deponent or person interrogated will be inadmissible at hearing, if the information sought is reasonably calculated to lead to relevant information. Any appeals of rulings by the hearing officer regarding discovery must be in writing and filed with the Board prior to hearing.

f) Failure to comply with any order regarding discovery may subject the offending persons to sanctions pursuant to Subpart H of this Part.

g) If any person serves any request for discovery or answers to discovery for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, or knowingly gives a false answer to discovery questions, the Board, on its own motion or the motion of a party, may impose sanctions pursuant to Subpart H of this Part.

h) A party must amend any prior responses to interrogatories, requests for production, or requests for admission if the party learns that the response is in some material respect incomplete or incorrect, and the additional or corrected information has not otherwise been made known to the other parties during the discovery process or in writing.

Section 101.622 Subpoenas and Depositions

a) Upon request by any party to a contested proceeding, the Clerk will issue subpoenas for the attendance of witnesses at a hearing or deposition. Subpoena forms are available at the Board's Chicago office. The person requesting the subpoena is responsible for completing the subpoena and serving it upon the witness.

b) Service of the subpoena on the witness must be completed no later than 10 days before the date of the required appearance. A copy of the subpoena must be filed with the Clerk and served upon the hearing officer within 7 days after service upon the witness. Failure to serve both the Clerk and the hearing officer will render the subpoena null and void. Service and filing must be in accordance with Subpart C of this Part.

c) Subpoenas may include a command to produce books, papers, documents, or other tangible things designated therein and relevant to the matter under consideration.

d) The hearing officer, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance, may quash or modify the subpoena if it is unreasonable or irrelevant. The hearing officer will rule upon motions to quash or modify material requested in the subpoena pursuant to subsection (c) of this Section in accordance with the standards articulated in Section 101.614 of this Part.

e) Each witness subpoenaed by a party under this Section is entitled to receive witness fees from that party as provided in Section 4.3 of the Circuit Courts Act [705 ILCS 35/4.3].

f) Unless the hearing officer orders otherwise, any witness subpoenaed for a deposition may be required to attend only in the county in which he resides or maintains an office address. In accordance with Supreme Court Rule 206(d), all depositions must be limited to 3 hours in length unless the parties and the non-party deponent by stipulation agree to a longer time frame or unless the hearing officer orders otherwise after a showing of good cause. (See Ill. S. Ct. Amended Rule 206(d).)

g) Failure of any witness to comply with a subpoena will subject the witness to sanctions under this Part, or the judicial enforcement of the subpoena. The Board may, upon proper motion by the party requesting the subpoena, request the

Attorney General to pursue judicial enforcement of the subpoena on behalf of the Board.

Section 105.214 Board Hearing

a) Except as provided in subsections (b), (c) and (d) of this Section, the Board will conduct a public hearing, in accordance with 35 Ill. Adm. Code 101.Subpart F, upon an appropriately filed petition for review under this Subpart. The hearing will be based exclusively on the record before the Agency at the time the permit or decision was issued, unless the parties agree to supplement the record pursuant to Section 40(d) of the Act. If any party desires to introduce evidence before the Board with respect to any disputed issue of fact, the Board will conduct a separate hearing and receive evidence with respect to the issue of fact.

b) The Board will not hold a hearing on a petition for review under this Subpart if the Board disposes of the petition on a motion for summary judgment brought pursuant to 35 Ill. Adm. Code 101.516.

c) The Board will not hold a hearing on a petition for review under Section 105.204(c) of this Subpart if the Board determines that:

1) The petition is duplicative or frivolous; or

2) The petitioner is so located as to not be affected by the permitted facility.

d) The Board will not hold a hearing on a petition for review under Section 105.204(b) or (d) of this Subpart if the Board determines that the petition is duplicative or frivolous.

e) If the Board determines to hold a hearing, the Clerk will give notice of the hearing pursuant to 35 Ill. Adm. Code 101.602.

Section 105.410 Agency Record

a) The Agency must file the entire record of its decision with the Board in accordance with Section 105.116 of this Part.

b) The record must include:

1) The plan or budget submittal or other request that requires an Agency decision;

2) Correspondence with the petitioner and any documents or materials submitted by the petitioner to the Agency related to the plan or budget submittal or other request;

3) The final determination letter; and

4) Any other information the Agency relied upon in making its determination.

III. ARGUMENT

1. Petitioner's Motion to Compel is Not Ripe for Decision.

The Motion to Compel is not ripe for consideration and is bordering on specious. Petitioner cannot point to a single procedural requirement that it followed to either seek discovery or request a subpoena.

First, let us consider what the Board regulations require relative to discovery. According to Section 101.616, it is apparent that an assigned Board Hearing Officer is charged with the duty of setting all discovery deadlines in a case (which are not set by statute). Now, not only can Petitioner not cite to a discovery deadline missed by the Illinois EPA, Petitioner has the additional seemingly insurmountable problem that it is unable to point to any deadline relative to discovery ever considered – let alone issued – by the Hearing Officer. The Illinois EPA must question, therefore, how Petitioner can possibly request a determination that some form of discovery be compelled.

Second, if we get over the rather sticky procedural issue above – which the Illinois EPA deems dispositive, Petitioner seeks to compel the deposition of a staff member – again – without ever availing itself to the Board's procedural rules. Perhaps skipping all deliberation, discussion and argument associated with discovery is simpler for Petitioner, however, it appears that Petitioner should, at very least, seek some form of formal subpoena to be issued before it comes claiming the ability to compel anything from the Illinois EPA or for that matter the Board. Section 101.622 appears to require that a party seeking deposition to, at very least, file such a request with the Board. This was not done in this case. Apparently, this Agency and the Board should consider the fact that Petitioner, following receipt of the Illinois EPA's record and dispositive motion, sought to discuss the possibility of deposition through e-mail and such e-mail

should somehow be deemed similar to seeking a formal subpoena from the Clerk. Frankly, the Illinois EPA is at a loss with how to respond to this contention other than to state that we object to the issuance of a Motion to Compel absent Petitioner following some semblance of procedural practice before the Board.

It is almost amusing to suggest that somehow the Illinois EPA should be found to be compelled to subject an employee to deposition based upon an e-mail exchange. What did the Illinois EPA possibly not comply with that it should be compelled to comply with by Board Order?

It seems simplistic that Petitioner cannot ask that the Board consider compelling a deposition of Illinois EPA staff when Petitioner has not sought discovery in the first place. In an apparent rush to seek more time or information (information which Petitioner already possesses) Petitioner seeks to direct the Illinois EPA to comply with a phantom discovery request. If one searches the Board's record in this matter – they will not find any ruling that discovery was ordered. Formal discovery motions have not been filed in this case. It is true, though not presented by Petitioner in any detail, that e-mails were exchanged between counsel. Petitioner's counsel sought Illinois EPA counsel's opinion as to whether a deposition could be taken. Surely, the Board would not consider an informal e-mail exchange as a basis for compelling a party to discovery without either (1) first having a Board Order requiring discovery and setting deadlines or (2) some formal request for discovery sought (such as – say – a subpoena for deposition, etc.). For that matter, it is notable that not a single discussion with the hearing officer to date has ever proposed discovery or a discovery schedule. As such, there is absolutely nothing at all to compel. And, the Petitioner's Motion must be dismissed.

2. Discovery is not Warranted

This case is very simple and straight forward. It is a case where the relevant facts are not in dispute. Petitioner has only convoluted the matter by attempting to represent that it did not

know of the existence of the first eligibility determination that is simply not the case. (Petition at p.3; Motion to Compel at p.3)

Firstly, such a contention is wholly irrelevant to the appeal. It is important to consider the fact the Petitioner cites to no precedent that would suggest that an applicant need be aware of the basis of an Agency determination prior to a decision. This is what Petitioner offers for its basis of its appeal and Motion to Compel. Frankly, deposing an Agency employee will not shed any light whatsoever on the issue of why or whether Petitioner was, as it suggests, unaware of the other determination.

If we presume for one moment, in theory, that it can be established that Petitioner did not know of the initial determination, the obvious question is what effect this would have on the Illinois EPA's determination. The short answer is NONE. The decision that was made, was based upon the two determinations whether or not Petitioner was aware of the initial determination.

Moreover, what can be said is that when a decision is made, the Illinois EPA will file a record indication its basis for the decision. I believe that it is uncontroverted that the basis for the challenged decision has been included within the record. (PCB Regulation 35 Ill. Adm. Code 105.410 and AR, p. 13 and AR, p.29) The record reflects the exact fact.

In any event the contention that Petitioner was unaware of the existence of the eligibility determination applied is incorrect. Petitioner itself had applied for two eligibility determinations from the Office of the State Fire Marshall. AR, p. 13 and AR, p.29

Both determinations were not unknown to Petitioner, both existed at the time Petitioner sought a determination on its application and, indeed, both are present within the Administrative Record in this matter. Thus, the question is simply, which of Petitioner's determinations should have been applied. The Illinois EPA answered this question already and specified its conclusion for Petitioner within its decision letter which determination was applied. As such, when the

Illinois EPA issued its decision, Petitioner knew (and continues to know) which determination Illinois EPA applied to its application. Petitioner was entitled to challenge whether the Illinois EPA applied the correct determination, which it did. However seeking discovery on this issue is unwarranted since the issue has become solely a matter of law (i.e., was the correct determination applied).

Finally, the Board need look no further than the Petitioner's own appeal filed in this matter to make a determination that this matter can be handled by Summary Judgment. Petitioner itself states that: "On October 29, 2010, the Agency refused payment, stating that it had located a heretofore unknown eligibility and determination letter from December 20, 1991, indicating that the deductible for the site is $100,000. A true and correct copy of said decision is attached hereto as Exhibit A. * * * * *The proper deductible for this site is $10,000." Where the Petitioner within its own pleading is clear that the issue is limited to which determination should have been applied, and offers that the determination not chosen by the Illinois EPA was the correct choice, the Board can determine that by Petitioner's own argument within its own pleading that there exist no material facts in dispute.

3. Discovery is not Warranted When a Motion for Summary Judgment is Pending.

Discovery in a case such as this would be wasteful and is harassing to the Illinois EPA. The Board has determined that it will not entertain discovery when a Motion for Summary Judgment is pending. In the case of Des Plaines River Watershed Alliance v. IEPA, PCB 04-88 (Nov. 17, 2005), the Board didn't decide whether discovery was warranted until after it ruled on the Motion for Summary Judgment. The Illinois EPA suggests that such an outcome was reasonable when a dispositive motion is on file. The same reasoning should be applied to these facts and Petitioner's Motion should be dismissed.

The Illinois EPA, on June 15, 2011, filed a Motion for Summary Judgment. This case presents no genuine issue of material fact and the Illinois EPA is entitled to judgment as a matter of law. Indeed, the purpose of filing a motion for summary judgment is that the filing party believes that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Dowd & Dowd, Ltd. v. Gleason, 181 Ill.2d 460, 483, 693 N.E.2d 358, 370 (1998); McDonald's Corporation v. Illinois Environmental Protection Agency, PCB 04-14 (January 22, 2004), p. 2. The Board should hear the motion for summary judgment petition "exclusively on the basis of the record before the Agency." 415 ILCS 5/40(e) (2004); Prairie Rivers Network v. IEPA and Black Beauty Coal Co., PCB 01-112, (Aug. 9, 2001) ("Prairie River").

4. The Board is to Decide the Case Based Exclusively Upon the Administrative Record.

Presuming arguendo, that the Board finds some credible rationale to entertain a discussion of the matter raised within Petitioner's Motion to Compel, which, again, the Illinois EPA maintains is not ripe and as such must be dismissed, the Board should consider the fact that the Administrative Record has been filed in this matter and, based upon precedent rationale the Petitioner's Motion to Compel must be DENIED.

Section 105.214(a) of the Board's regulations states, "... the hearing will be based exclusively on the record before the Agency at the time the permit or decision was issued, unless the parties agree to supplement the record pursuant to Section 40(d) of the Act. If any party desires to introduce evidence before the Board with respect to any disputed issue of fact, the Board will conduct a separate hearing and receive evidence with respect to the issue of fact." In this case, a Motion for Summary Judgment has been filed and there is no material issue of fact upon which a hearing needs to be held. Therefore, as Section 105.214(a) states, the Board is to

decide the case based exclusively upon the record before the Illinois EPA at the time the decision was made.

Section 57.8(i) of the Illinois Environmental Protection Act ("Act") (415 ILCS 5/57.8(i)) grants an individual the right to appeal a determination of the Illinois EPA to the Board pursuant to Section 40 of the Act (415 ILCS 5/40). Section 40 of the Act, the general appeal section for permits, has been used by the legislature as the basis for this type of appeal to the Board. Thus, when reviewing an Illinois EPA determination of ineligibility for reimbursement from the Underground Storage Tank Fund, the Board must decide whether or not the application as submitted demonstrates compliance with the Act and Board regulations. Rantoul Township High School District No. 193 v. Illinois EPA, PCB 03-42 (April 17, 2003), p. 3. In deciding whether the Illinois EPA's decision under appeal here was appropriate, the Board must look to the documents within the Administrative Record.

As stated above, LUST appeals are allowed under Section 40 of the Act. Section 40 of the Act, the general appeal section for permits, has been used by the legislature as the basis for LUST appeals to the Board. The only issue in any LUST appeal must concern whether the Illinois EPA's decision, based solely upon the materials in front of the Illinois EPA, was consistent with the Illinois Environmental Protection Act and the Board regulations, and therefore the only documentation relevant to this or any other purported LUST appeal action is, and would be, the documentation in front of and available to the Illinois EPA at the time a decision is made. The Illinois EPA is under regulatory obligation to provide its "administrative record," which consists of all documents before it relevant to its decision making, and therefore there is no basis for, or authority for, the discovery Petitioners attempt to engage in.

The Petitioners have not elaborated upon the information they believe is relevant, discoverable, and admissible that was not before the Illinois EPA at the time the permit was issued. *See* Prairie Rivers Network v. IPCB, *et al.*, 781 N.E.2d 372, 379 (4th Dist. 2002), With

the complete Administrative record filed, there is no need or possibility for discovery given that everything that is relevant is already in plain view in the Administrative record

Section 40(e)(3) of the Act requires the Board to "... hear the petition . . . exclusively on the basis of the record before the Agency." 415 ILCS 5/40(e)(3) (2004). The Board's procedural rules reflect this requirement: "[t]he hearing will be based exclusively on the record before the Agency at the time the permit or decision was issued." 35 Ill. Adm. Code 105.214(a). Board cases have also reflected this requirement. "The Board has consistently held that, in permit appeals, its review is limited to the record that was before IEPA at the time the permitting decision was made." Prairie Rivers Network v. IEPA and Black Beauty Coal Company, PCB 01-112, slip op. at 10 (Aug. 9, 2001), citing Alton Packaging Corp. v. IPCB, 516 N.E.2d 275, 280 (5th Dist. 1987) (disallowing introduction of new evidence not presented to the Agency in the permit proceeding); Community Landfill Co. v. IEPA, PCB 01-48, 01-49 (Apr. 5, 2001); Panhandle Eastern Pipeline Co. v. IEPA, PCB 98-102 (Jan. 21, 1999); West Suburban Recycling and Energy Center, L.P. v. IEPA, PCB 95-125, 95-199 (Oct. 17, 1996). Furthermore, the Board's decision "is not based on information developed by the permit applicant, or the Agency, after the Agency's decision." Community Landfill Co. and City of Morris v. IEPA, PCB 01-48,

In Des Plaines River Watershed Alliance v. IEPA, PCB 04-88 (Nov. 17, 2005), the Board noted "that, in one Agency permit appeal, "[d]iscovery in the action was extensive." Waste Management, Inc. v. IEPA, PCB 84-45, PCB 84-61, PCB 84-68 (consolidated), slip op. at 1 (Oct. 1, 1984), *aff'd. sub nom.* IEPA v. IPCB, 503 N.E.2d 343 (1986). The record in the Waste Management case, however, shows significant difficulties in compiling and filing a voluminous record. *Id.* (including in record more than 2,000 pages of transcripts and ten boxes of documents). A Board order on May 18, 1984, allowed the Agency additional time to file its record. Board orders dated July 19, 1984, and August 10, 1984, allowed the Agency to file

additional materials in order to complete the required record. In this case, however, the Board has before it no dispute about the contents of the Agency record. Particularly under those circumstances, the Board finds there is no compelling reason to permit discovery to supplement the Agency record with materials required by Section 105.212 of the Board's procedural rules. 35 Ill. Adm. Code 105.212(b)." This case is very similar to the case in DesPlaines in that the entire record has been filed, it is relatively small, and there is no dispute about the Administrative Record. There is no compelling reason in this case to permit discovery.

This Board has unambiguously ruled that discovery is inappropriate in permit appeals matters, and is unavailable to permit appeal petitioners and respondents alike. Des Plaines River Watershed Alliance v. IEPA, PCB 04-88 (Nov. 17, 2005). Despite this unambiguous ruling, and with no good faith argument for the extension, modification, or reversal of the existing law,

This motion should not be viewed in a vacuum separated from Petitioner's companion Motion to Request Additional Time to respond to the Illinois EPA's Motion for Summary Judgment. While the Illinois EPA must file a separate response to the Motion for Extension of Time, the Illinois EPA is compelled to point out that the second motion is based almost entirely upon Petitioner's argued need for deposition. Since Petitioner has established no justifiable need to compel discovery the Board should make quite clear that the response clock is ticking and remains ticking pursuant to applicable deadline set by statute.

IV. CONCLUSION

For the reasons stated herein, the Illinois EPA respectfully requests that the Board, through its hearing officer, DISMISS or in the alternative DENY the Petitioner's Motion to Compel.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

Respondent

____

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Dated: July 8, 2011

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

ESTATE OF GERALD D. SLIGHTOM, Petitioner,	)	
	)	
v.	)	PCB 11-25
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, Respondent.	)	

ORIGINAL

MOTION TO OBJECT TO MOTION FOR EXTENSION

NOW COMES the Respondent, the Illinois Environmental Protection Agency ("Illinois EPA"), by one of its attorneys, Melanie A. Jarvis, Assistant Counsel and Special Assistant Attorney General, and, pursuant to 35 Ill. Adm. Code 101.500, 101.508 and 101.522, hereby respectfully moves the Illinois Pollution Control Board ("Board") to deny the Petitioner's Motion for Extension of Time to Respond to Motion for Summary Judgment. In support of said motion, the Illinois EPA states as follows:

I. APPLICABLE FACTS

1. The Petitioner filed an appeal of the Illinois EPA's October 29, 2010 decision on December 6, 2010 and amended its Petition on January 12, 2011.
2. Petitioner's consultant through Freedom of Information Act ("FOIA") received the entire Illinois EPA file regarding this case in December 2010.
3. The Illinois EPA filed the Administrative Record and Motion for Summary Judgment on June 15, 2011.
4. The Administrative Record file in this case consists of the entire Fiscal File regarding this site.

II. APPLICABLE LAW

Section 101.522 Motions for Extension of Time

The Board or hearing officer, for good cause shown on a motion after notice to the opposite party, may extend the time for filing any document or doing any act which is required by these rules to be done within a limited period, either before or after the expiration of time.

III. ARGUMENT

The Petitioner has been aware of the facts of the case since it requested the first eligibility determination, the Petitioner's consultant has known about the facts of the case at least since the Illinois EPA issued its decision and the consultant FOIA'd the Illinois EPA file regarding the case. The fact that the consultant now claims that it did not know what the record contained was not the fault of the Illinois EPA as the file is a matter of public record and the consultant has shown that it knows how to make a FOIA request. Since the Petitioner has been the sole party remediating the site, it should be aware of the facts surrounding the site better than any other party to this case. The Administrative Record has been filed in this case and includes all of the information required to be included under the Board's rules. The record is not voluminous. In fact, it is relatively small. The Petitioner has had sufficient time to review the facts of the case and the law involved in order to be able to prepare an answer to the Illinois EPA's Motion for Summary Judgment. No good cause has been shown for an extension of time.

The Illinois EPA is compelled to point out that this motion is based almost entirely upon Petitioner's argued need for deposition. Since Petitioner has established no justifiable need to compel discovery the Board should make quite clear that the response clock is ticking and remains ticking pursuant to applicable deadline set by statute.

V. CONCLUSION

For the reasons stated herein, the Illinois EPA respectfully requests that the Board, through its hearing officer, DENY the Petitioner's Motion for Extension.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

Respondent

____

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Dated: July 8, 2011

ORIGINAL

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on July 8, 2011, I served true and correct copies of an OBJECTION TO PETITIONER'S MOTION TO COMPEL and an OBJECTION TO PETITIONER'S MOTION FOR EXTENSION OF TIME, via the Board's COOL system and 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:

John Therriault, Acting Clerk
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James R. Thompson Center
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Illinois Pollution Control Board
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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
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