

Service List

For The Board of Trustees of the University of Illinois

Thomas W. Dimond
Ice Miller LLP
200 W. Madison Street
Chicago, Illinois 60606

Illinois Environmental Protection Agency

Maureen Wozniak
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(By First Class U.S. Mail)

Illinois Pollution Control Board

John Therriault
Assistant Clerk of the Board
Illinois Pollution Control Board
100 W. Randolph Street, Suite 11-500
Chicago, Illinois 60601
(By electronic filing)

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
100 W. Randolph Street, Suite 11-500
Chicago, Illinois 60601
(By hand delivery)

615 in response to the University's declaratory judgment action. On February 13, 2013, the Circuit Court entered a briefing schedule on the Motion to Dismiss, with argument set for April 15, 2013. Additionally, on February 8, 2013, the University filed a Motion for Summary Judgment. Briefing on that motion was stayed pending the outcome of the Motion to Dismiss.

Complainant agrees that given the expedited pace at which the declaratory judgment action is currently proceeding, it would be prudent to enter a motion to stay PCB Nos. 13-35 and 13-36 until such time that the jurisdictional issue is resolved. However, periodic updates on the progress of the declaratory judgment action should be required to ensure that a stay continues to be warranted for the Board matters.

Additionally, Respondent has made a repeated point in its motion that:

- * "none of the alleged violations pose immediate threats to the environment" (Respondent's Motion, Sec. II, ¶ 4),
- * "the University is also currently operating in *general* compliance with the terms of the CAAPP Permits previously issued for the East Campus and the West Campus" (Respondent's Motion, Sec. II, ¶ 5, emphasis added),
- * "[t]hus, there is no ongoing pollution concerns at either the East Campus or West Campus locations" (Respondent's Motion, Sec. II, ¶ 7),
- * "the State's claims against the University in these proceedings do not allege any imminent environmental harm; rather, the claims concern past alleged violations that the University has addressed to the extent it can, and a further resolution is now in the hands of the IEPA" (Respondent's Motion, Sec. II, ¶ 7), and;
- * "a stay is justified because these proceedings do not involve the risk of ongoing environmental harm" (Respondent's Motion, Sec. III.C, ¶ 20).

Complainant vehemently denies these statements as fact. Respondent is operating its Clean Air Act Permit Program ("CAAPP") facilities (the East Campus Facility and West Campus Facility) without the required CAAPP Permits. These are on-going, present violations. The contention that Respondent does not somehow pose an immediate threat to the environment because it has

chosen to *generally* comply with the terms of its expired CAAPP Permits does not render these alleged violations wholly past. In fact, at any point in time the University could unilaterally choose to stop complying with the terms of its expired CAAPP Permits and the State would not have any recourse other than what is presented in these Board cases.

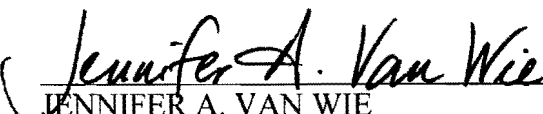
As stated above, the Complainant agrees that a stay is warranted in the short-term given the speed at which the declaratory judgment action is proceeding before the Circuit Court, but requests that periodic statuses be set to ensure that the stay remains justified.

Wherefore, the Complainant, in response to Respondent's Motion to Consolidate Related Proceedings and to Stay the Consolidated Proceedings, does not object to either the consolidation or stay of PCB Nos. 13-35 and 13-36, conditioned upon the request for periodic updates on the progress of the declaratory judgment action.

RESPECTFULLY SUBMITTED:

PEOPLE OF THE STATE OF ILLINOIS,
by LISA MADIGAN, Attorney General
of the State of Illinois


MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: 
JENNIFER A. VAN WIE
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602
(312) 814-0609
jvanwie@atg.state.il.us

Date: March 15, 2013

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached Complainant's Response to Respondent's Motion to Consolidate Related Proceedings and to Stay the Consolidated Proceedings and Notice of Filing, by U.S. Certified Mail (return receipt requested), unless otherwise noted, upon the persons listed on the service list.


JENNIFER A. VAN WIE
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602
(312) 814-0609

Date: March 15, 2013