

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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JAN 04 2007

STATE OF ILLINOIS
Pollution Control Board

CITY OF CHICAGO DEPARTMENT)
OF ENVIRONMENT,)
)
Petitioner,)
)
v.)
)
1601-1759 EAST 130TH STREET, LLC,)
)
Respondent.)

AC 07-25

NOTICE OF FILING

TO: Jeffrey J. Levine
Jeffrey J. Levine, P.C.
20 N. Clark St., Suite 800
Chicago, IL 60602

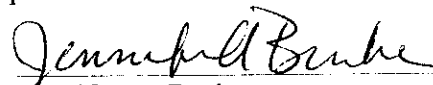
PLEASE TAKE NOTICE that on January 4, 2007, Petitioner filed with the Clerk of the Illinois Pollution Control Board the attached Appearance and Petitioner's Opposition to Consolidation, copies of which are served upon you.


Jennifer A. Burke

Jennifer A. Burke
Senior Counsel
City of Chicago Department of Law
30 N. LaSalle Street, Suite 900
Chicago, IL 60602
(312) 742-3990

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that on January 4, 2007 she caused copies of this notice and the documents referenced therein to be served on the party to whom it is directed by U.S. Mail, first class postage prepaid.


Jennifer A. Burke

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APPEARANCE

Jennifer A. Burke files her appearance in this proceeding on behalf of the City of Chicago Department of Environment.


Jennifer A. Burke

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Senior Counsel
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(Administrative Citation)

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PETITIONER'S OPPOSITION TO CONSOLIDATION

The City of Chicago Department of Environment ("CDOE"), by and through its attorney, Mara S. Georges, Corporation Counsel for the City of Chicago, objects to Respondent's Motion to Consolidate because consolidation is not warranted and will delay determination of the pending claims.

On May 10, 2006, CDOE filed Administrative Citation No. AC 06-41 against 1601-1759 East 130th Street, LLC, Respondent, for violations of the Illinois Environmental Protection Act, 415 ILCS 5/21(p), found at the property located at 1601-1759 East 130th Street, Chicago, Illinois, during inspections on March 22, 2006 by CDOE inspectors Rafael Maciel and Christopher Antonopoulos. Respondent subsequently petitioned the Board to contest AC 06-41. On June 15, 2006, the Board accepted AC 06-41 for hearing. Since that time, the hearing officer has conducted several status conferences, Respondent has deposed Mr. Maciel, and the hearing officer has ordered the parties to be prepared to discuss their readiness for hearing at the next status hearing on February 1, 2007.

On November 21, 2006, six months after filing AC 06-41, CDOE filed Administrative Citation No. AC 07-25 against 1601-1759 East 130th Street, LLC, Respondent, for new violations of the Illinois Environmental Protection Act, 415 ILCS 5/21(p), found at the same property during an inspection on October 3, 2006 by CDOE inspectors Stanley Kaehler and Lafayette Roberston. On December 21, 2006, Respondent petitioned the Board to contest AC 07-25 and moved to consolidate AC 07-25 with AC 06-41.

CDOE opposes consolidating AC 07-25 with AC 06-41. The Illinois Pollution Control Board (“Board”) has the authority to consolidate proceedings for the purpose of hearing or decision or both. 35 Ill. Adm. Code 101.406. The Board will consolidate proceedings if consolidation is in the interest of convenient, expeditious, and complete determination of claims, and if consolidation would not cause material prejudice to any party. *Id.* Consolidating AC 07-25 and AC 06-41 will not serve these interests.

First, the facts in each case do not arise from the same act or occurrence. The citations, AC 07-25 and AC 06-41, contain separate violations based on two different inspections over six months apart. Furthermore, different CDOE inspectors conducted each of the inspections and, therefore, the witnesses at each hearing will be different. Although the respondent and the location are the same in both cases, consolidating these claims will not improve the efficiency of discovery, pre-hearing preparations, or hearing on the claims because of the distinct facts unique to each citation.

Second, the proceeding for AC 06-41 has been pending for nearly eight months and is ready for hearing. CDOE has responded to all of Respondent’s discovery requests by providing documents and making Mr. Maciel available for deposition. Consolidation


would unnecessarily delay the imminent hearing on AC 06-41 and, therefore, cause prejudice to CDOE.

For the reasons stated herein, these cases should be considered separately and on their own merits. CDOE respectfully requests that the Board deny Respondent's request to consolidate AC 07-25 with AC 06-41.

Respectfully submitted,

CITY OF CHICAGO
DEPARTMENT OF ENVIRONMENT

Mara S. Georges, Corporation Counsel
of the City of Chicago

By: 
Jennifer A. Burke

Dated: January 4, 2007

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