

ILLINOIS POLLUTION CONTROL BOARD
January 26, 2007

CITY OF CHICAGO DEPARTMENT OF)
ENVIRONMENT,)
)
Complainant,)
)
v.) AC 07-25
) (Administrative Citation)
1601-1759 EAST 130th STREET, L.L.C.,)
)
Respondent.)

ORDER OF THE BOARD (by T.E. Johnson):

On November 21, 2006, the City of Chicago Department of Environment (CDOE) timely filed an administrative citation against 1601-1759 East 130th Street, L.L.C. (respondent). *See* 415 ILCS 5/31.1(c) (2004); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns respondent's site located at 1601 E. 130th Street in Chicago, Cook County. On December 21, 2006, the respondent filed a petition to contest the administrative citation, and a motion to consolidate this proceeding with another pending administrative citation action involving the same parties, AC 06-41. The Board accepted the petition for hearing on January 4, 2007, but reserved ruling on the motion to allow time for a response from the CDOE. The CDOE filed a response to the motion to consolidate on January 4, 2007.

In the motion to consolidate, the respondent asserts that it has been charged with similar (if not the same) violations in a pending Board action and seeks consolidation for purposes of judicial economy with City of Chicago v. 1601-1759 East 130th Street, LLC, AC07-25 (CDOE No. 06-03-AC). Mot. at 1. The respondent contends that the counsel and facts are similar if not the same in both matters. *Id.*

In its response to the motion, the CDOE asserts that consolidation is not warranted and will delay determination of the pending claims. Resp. at 1. The CDOE contends that the Board accepted AC06-41 for hearing on June 15, 2006, that the hearing officer has conducted several status conferences since that time, and that 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. *Id.*

The CDOE contends that AC 07-25 was filed for new violations found at the same property during a new inspection conducted by different inspectors than AC06-41. Resp. at 2. Thus, CDOE argues, the facts in each case do not arise from the same act or occurrence, and the witnesses at each hearing will be different. *Id.* The CDOE argues that 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. *Id.* The CDOE concludes that as AC 06-41 is ready for hearing, consolidation would unnecessarily delay the imminent hearing on AC 06-41 and, therefore, cause prejudice to the CDOE. Resp. at 2-3.

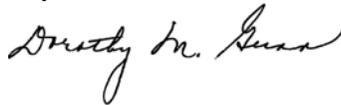
The Board will consolidate proceedings if consolidation is in the interest of convenient, expeditious, and complete determination of claims, and if consolidation would not cause material prejudice to any party. *See* 35 Ill. Adm. Code 101.406.

A review of the record reveals that AC06-41 has been pending for approximately eight months and that the matter is, or will soon be, ready for hearing. Thus, consolidating AC06-41 with AC07-25 will delay the resolution of AC06-41. Further, while the respondent's witnesses might be the same for each matter, the CDOE inspectors for each administrative citation are different. Finally, the violations alleged in each citation are different.

The Board finds that consolidation is not appropriate in this instance because it would not result in expeditious and complete determination of the claims in AC06-41. Thus, the respondent's motion to consolidate is denied.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 26, 2007, by a vote of 4-0.

A handwritten signature in cursive script, appearing to read "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board