

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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|-----------------------------------|---|--------------|
| VILLAGE OF WILMETTE, |) | |
| Petitioner, |) | |
| |) | |
| v. |) | PCB 07-27 |
| |) | (UST Appeal) |
| ILLINOIS ENVIRONMENTAL PROTECTION |) | |
| AGENCY, |) | |
| Respondent. |) | |
| |) | |

NOTICE

Dorothy Gunn
Clerk
Illinois Pollution Control Board
100 West Randolph Street,
Suite 11-500
Chicago, Illinois 60601-3218

Mary Beth Cyze
Village of Wilmette
1200 Wilmette Avenue
Wilmette, Illinois 60091

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control
Board
100 West Randolph Street,
Suite 11-500
Chicago, Illinois 60601-3218

PLEASE TAKE NOTICE that I have today caused to be filed a MOTION FOR LEAVE TO FILE REPLY/RESPONSE TO PETITIONER'S RESPONSE TO IEPA'S MOTION FOR SUMMARY JUDGMENT AND CROSS MOTION FOR SUMMARY JUDGMENT and REPLY/RESPONSE TO PETITIONER'S RESPONSE TO IEPA'S MOTION FOR SUMMARY JUDGMENT AND CROSS MOTION FOR SUMMARY JUDGMENT with the Illinois Pollution Control Board, copies of which are served upon you.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

/s/ James G. Richardson
James G. Richardson
Special Assistant Attorney General

Dated: April 23, 2007
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544

**THIS FILING IS SUBMITTED ON RECYCLED PAPER
BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

VILLAGE OF WILMETTE,)
Petitioner,)
)
v.) PCB 07-27
) (UST Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Respondent.)

**MOTION FOR LEAVE TO FILE REPLY/RESPONSE TO PETITIONER'S
RESPONSE TO IEPA'S MOTION FOR SUMMARY JUDGMENT AND CROSS
MOTION FOR SUMMARY JUDGMENT**

NOW COMES the Respondent, the Illinois Environmental Protection Agency ("Illinois EPA"), by one of its attorneys, James G. Richardson, Assistant Counsel and Special Assistant Attorney General, and pursuant to Section 101.500(e) of the Illinois Pollution Control Board's ("Board's") procedural rules, 35 Ill. Adm. Code 101.500(e), seeks leave to file a reply to Petitioner's Response to IEPA's Motion for Summary Judgment and Cross Motion for Summary Judgment ("Response/Cross Motion"). The Illinois EPA received the Response/Cross Motion on April 10, 2007. In support of this motion, the Illinois EPA states as follows:

1. The Response/Cross Motion extensively references the Board's December 21, 2006 decisions in Broadus Oil v. IEPA, PCB 04-31, 05-43 (cons.) and FedEx Ground Package System, Inc. v. IEPA, PCB 07-12.
2. The Illinois EPA's Motion for Summary Judgment in this case was filed on November 20, 2006 before Broadus and FedEx were decided.
3. Allowing the Illinois EPA to file a reply so that the Illinois EPA can provide its perspective on the applicability of Broadus and FedEx to the instant case is appropriate and would prevent the Illinois EPA from suffering any material prejudice.

For the reasons stated herein, the Illinois EPA respectfully requests that the Board allow the Illinois EPA to file a reply to the Response/Cross Motion to prevent material prejudice.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

/s/ James G. Richardson
James G. Richardson
Special Assistant Attorney General

Dated: April 23, 2007
1021 North Grand Avenue East
P.O. Box 19276
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217/782-5544

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

VILLAGE OF WILMETTE,)
Petitioner,)
)
v.) PCB 07-27
) (UST Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Respondent.)

REPLY/RESPONSE TO PETITIONER'S RESPONSE TO IEPA'S MOTION FOR SUMMARY JUDGMENT AND CROSS MOTION FOR SUMMARY JUDGMENT

NOW COMES the Respondent, the Illinois Environmental Protection Agency ("Illinois EPA"), by one of its attorneys, James G. Richardson, Assistant Counsel and Special Assistant Attorney General, and hereby submits to the Illinois Pollution Control Board ("Board") its Reply/Response to Petitioner's Response to IEPA's Motion for Summary Judgment and Cross Motion for Summary Judgment. The Illinois EPA received Petitioner's Response to IEPA's Motion for Summary Judgment and Cross Motion for Summary Judgment ("Response/Cross Motion") on April 10, 2007. It is the Illinois EPA's position that its September 14, 2006 decision rejecting the Village of Wilmette's ("Wilmette's") High Priority Corrective Action Plan Budget amendment be affirmed and that Wilmette's Cross Motion for Summary Judgment be denied.

I. ARGUMENT

The Illinois EPA filed its Motion for Summary Judgment in this case on November 20, 2006, arguing that Section 732.405(d) of the Board's regulations, 35 Ill. Adm. Code 732.405(d), prohibited it from reviewing a High Priority Corrective Action Plan Budget amendment submitted after the issuance of a No Further Remediation Letter. On December 21, 2006, the Board addressed this same issue for the first time in two other cases. In both cases, Broadus Oil v. IEPA, PCB 04-31, 05-

43 (cons.) and FedEx Ground Package System, Inc. v. IEPA, PCB 07-12, the Board upheld the Illinois EPA's rejection of budget amendments submitted after the issuance of No Further Remediation Letters.

Most of the arguments in Wilmette's Response/Cross Motion have already been presented to the Board by the petitioners in Broadus and FedEx. The Board's December 21, 2006 decisions outline and analyze these arguments as well as those presented by the Illinois EPA, making it unnecessary to repeat them here. Instead, the Illinois EPA requests that the Board take judicial notice of these arguments and its analyses in Broadus and FedEx and reach a similar conclusion in favor of the Illinois EPA in the instant case.

Wilmette's other arguments attempt to distinguish its situation from Broadus and FedEx. Wilmette places significance on the fact that the costs in its budget amendment, even though they did exceed previously approved budget amounts for their subcategories, did not exceed the previously approved total budget as a whole. This argument is not persuasive. It appears that FedEx had a balance remaining in its approved total budget when its budget amendment was submitted, but this fact neither played a role in the Board's analysis in FedEx nor did it result in FedEx partially prevailing on its budget amendment. FedEx Ground Package System, Inc. v. IEPA, PCB 07-12, slip op. at 3 (December 21, 2006). Wilmette also claims the Illinois EPA does not dispute that the costs in question were related to corrective action, properly accounted for, and reasonable. This is mere conjecture since the Illinois EPA never completed a full review of the budget amendment. In addition, Wilmette's total budget surplus argument discounts the importance of budget subcategories, which are critical for reviewing budgets and making reasonableness determinations.

II. CONCLUSION

For the reasons stated herein, as well as those previously presented by the Illinois EPA, the Illinois EPA respectfully requests that the Board affirm its September 14, 2006 decision rejecting Wilmette's High Priority Corrective Action Plan Budget amendment and that Wilmette's Cross Motion for Summary Judgment be denied.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

/s/ James G. Richardson
James G. Richardson
Special Assistant Attorney General

Dated: April 23, 2007

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on April 23, 2007 I served true and correct copies of a MOTION FOR LEAVE TO FILE A REPLY/RESPONSE TO PETITIONER'S RESPONSE TO IEPA'S MOTION FOR SUMMARY JUDGMENT AND CROSS MOTION FOR SUMMARY JUDGMENT and REPLY/RESPONSE TO PETITIONER'S RESPONSE TO IEPA'S MOTION FOR SUMMARY JUDGMENT AND CROSS MOTION FOR SUMMARY JUDGMENT upon the persons and by the methods as follows:

[Electronic Filing]

Dorothy Gunn
Clerk
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601-3218

[1st Class U.S. Mail]

Mary Beth Cyze
Village of Wilmette
1200 Wilmette Avenue
Wilmette, Illinois 60091

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
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Chicago, Illinois 60601

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

/s/ James G. Richardson

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