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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

IN THE MATTER OF:)	
)	
PETITION OF MAXIMUM INVESTMENTS,)	AS 09-2
LLC FOR AN ADJUSTED STANDARD)	(Adjusted Standard – Land)
FROM 35 ILL. ADM. CODE 740.210(A)(3))	
FOR STONEY CREEK LANDFILL IN)	
PALOS HEIGHTS, ILLINOIS)	

NOTICE

John Therriault, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

Bradley Halloran, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

Llewellyn Kennedy
Weil & Associates
60 Revere Drive, Suite 888
Northbrook, IL 60062

PLEASE TAKE NOTICE that I have today filed with the office of the Clerk of the Pollution Control Board the BRIEF OF ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, copies of which are herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,



William D. Ingersoll
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)
Dated: April 23, 2006

the site was enrolled in the Site Remediation Program (SRP). *See* Section 58 *et seq.* of the Act and related regulations at 35 Ill. Adm. Code 740. This position was taken to assure that funding would be provided by the requester for the review services expected of the Agency. However, Petitioner is apparently unable to satisfy the owner signature requirement to enter the SRP, and here seeks relief from that regulatory requirement in 35 Ill. Adm. Code 740.210(a)(3).

Petitioner alleges that it holds a tax lien on the relevant property, but obviously realizes that it cannot take a deed without disqualifying itself from another requirement in Section 22.2b – *i.e.*, that the person is not otherwise liable under Section 22.2, which would create liability by ownership status. While the Agency cannot confirm all of the factual allegations made by Petitioner, we can assume them to be true for the sake of the issue before the Board in this brief.

DISCUSSION

Petitioner’s claims that “the property will forever remain abandoned and off the tax rolls” may be accurate predictions, but are not responsive to the Board’s inquiry. Instead, as the Board expressed concern, the definition of “Remediation Applicant” in Section 58.2 and the requirement of owner authorization in Section 58.7(b)(1)(F). So, while the Petitioner sought relief from the regulatory requirement at Section 740.210(a)(3), the regulatory requirement is merely a corresponding requirement contained in the Environmental Protection Act. The Board correctly pointed out that Section 28.1 authorizes it to grant relief from regulations it has promulgated. The legislature did not extend the authority to effectively amend legislation through an adjusted standard process.

There is also a practical limitation on Petitioner’s desires here. Even if the relief were granted, the Illinois EPA still would not be required to proceed toward a Section 22.2b release – usually referred to as a Prospective Purchaser Agreement. First, please note that the grant of

such a release is worded in the statute using the permissive “may” rather than “shall.” Further, the release is ultimately provided by the State of Illinois. In practice, this means the Agency works out acceptable language and response action approval, and then refers the matter to the Attorney General for final revision and execution. It is believed that the Attorney General must execute a release since it is from the *State of Illinois*, rather than just the Illinois EPA.

CONCLUSION

Consistent with the Board’s initial concerns and the discussion above, the Illinois EPA contends that the Board is not granted the authority to modify statutory requirements through the adjusted standard process found at Section 28.1 of the Act.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,



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CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on April 23, 2009, I served true and correct copies of the BRIEF OF ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, by placing true and correct copies 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 Mail postage affixed thereto, upon the following named persons:

John Therriault, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

Bradley Halloran, Hearing Officer
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