

ILLINOIS POLLUTION CONTROL BOARD  
January 23, 2003

2222 ELSTON LLC, )  
 )  
Complainant, )  
 )  
v. ) PCB 03-55  
 ) (Citizens UST Enforcement)  
PUREX INDUSTRIES, INC., FEDERAL DIE )  
CASTING COMPANY, FEDERAL )  
CHICAGO CORPORATION, RAYMOND E. )  
CROSS, BEVERLY BANK TRUST NO. 8- )  
7611, and LAKESIDE BANK TRUST NOS. )  
10-1087 AND 10-1343, )  
 )  
Respondents. )

ORDER OF THE BOARD (W.A. Marovitz):

This matter is before the Board on a motion to intervene (motion) filed by the City of Chicago (City) on December 20, 2002. No responses to the motion were filed.<sup>1</sup> For the reasons below, the Board denies the motion to intervene.

On October 25, 2002, complainant 2222 Elston LLC (Elston), filed a 13-count complaint against respondents seeking cost recovery for alleged clean-up expenses incurred regarding a property at 2228 N. Elston, Chicago, Cook County. On December 2, 2002, Respondent Purex Industries, Inc. (Purex) filed a motion to dismiss the complaint as frivolous. On December 5, 2002, respondents Federal Die Casting Company, Federal Chicago Corporation, Raymond E. Cross, Beverly Bank Trust No. 8-7611, and Lakeside Bank Trust Nos. 10-1087 and 10-1343 (collectively, Federal Respondents), filed a motion to dismiss the complaint. On December 16, 2002, the hearing officer granted Elston's combined motion to conduct limited personal jurisdiction discovery and motion for enlargement of time to respond to Purex's motion to dismiss. Also on December 16, 2002, the hearing officer granted Elston's unopposed motion for enlargement of time to file a response to the Federal Respondents' motion to dismiss. As of this date, the Board has not yet accepted the matter for hearing because the time for filing responses to the two motions to dismiss has not expired.

The City alleges that like Elston, the City has also incurred costs in addressing contamination at the property. Mot. at 1. Namely, the City allocated and incurred approximately \$350,000 in tax increment financing incentives at the property. Mot. at 1, citing Elston's

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<sup>1</sup> Pursuant to 35 Ill. Adm. Code 101.500, a party may file a response to a motion within 14 days of service. If no response is filed, the party is deemed to have waived objection to granting the motion, but the waiver does not bind the Board in its disposition of the motion. 35 Ill. Adm. Code 101.500.

complaint at 2. The City argues that if the contamination allegations are proven, it would be appropriate for the Board to issue an order directing respondents to reimburse both the City and Elston for costs expended in curing the contamination. Mot. at 1. The City alleges it may be materially prejudiced if the Board does not allow the City to intervene, because the Board may find a separate action filed by the City seeking recovery costs duplicative of this case. Mot. at 2.

Section 101.402 of the Board's procedural rules governs motions to intervene. 35 Ill. Adm. Code 101.402. Section 101.402(d) states in pertinent part:

[T]he Board may permit any person to intervene in any adjudicatory proceeding if:

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- 2) The person may be materially prejudiced absent intervention;

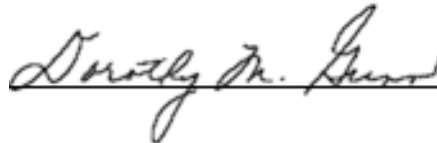
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The Board is not persuaded that the City may be materially prejudiced if it is not allowed to intervene. The City's assertion that the Board could find a separate complaint filed by the City to be duplicative is unpersuasive. A complaint is duplicative if it is "identical or substantially similar to one brought before the Board or another forum." 35 Ill. Adm. Code 101.202. The City has not provided sufficient facts to support its assertion that the City may be materially prejudiced if the Board does not permit the City to intervene in this action. The city has only inferred that because the City granted tax increment financing incentives at the property, the City may be entitled to some reimbursement if the Board orders reimbursement to Elston. The motion to intervene is denied.

Today's ruling does not preclude the City from filing its own complaint to seek reimbursement for costs incurred involving the site. If the City files its own complaint, consolidating the two actions may be appropriate.

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 23, 2003, by a vote of 6-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board