

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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JUL 20 2009

STATE OF ILLINOIS
Pollution Control Board

ORIGINAL

IN THE MATTER OF:
PETITION OF MAXIMUM INVESTMENTS, LLC) AS-09-02
FOR AN ADJUSTED STANDARD FROM)
35 ILL INOIS ADMINISTRATIVE CODE)
740.210(A)3 FOR THE STONEY CREEK)
LANDFILL IN PALOS HILLS, IL)

MOTION TO RECONSIDER RE ADJUSTED STANDARD

The Board issued its order of June 18, 2009 denying Petitioner the relief requested. Petitioner hereby requests that the Board reconsider its' finding for the following reasons.

Board member T.E. Johnson dissented from the Board's opinion. Petitioner believes that Johnson's points are well taken and a closer review of the statute indicates that the Board does have the authority to take the requested action under the statute.

The relevant definitions under the act are (emphasis added):

415 ILCS 5/58.2 Remediation Applicant" (RA) means **any person** seeking to perform or performing investigative or remedial activities under this Title, including the owner or operator of the site or persons authorized by law or consent to act on behalf of or in lieu of the owner or operator of the site.

415 ILCS 5/58.7 b) Review and evaluation by the Agency.

(1) Except for sites excluded under subdivision (a) (2) of Section 58.1, the Agency shall, subject to available resources, agree to provide review and evaluation services for activities carried out pursuant to this Title for which the RA requested the services in writing. As a condition for providing such services, the Agency **may** require that the RA for a site:

- (A) Conform with the procedures of this Title;
- (B) Allow for or otherwise arrange site visits or other site evaluation by the Agency when so requested;
- (C) Agree to perform the Remedial Action Plan as approved under this Title;
- (D) Agree to pay any reasonable costs incurred and documented by the Agency in providing such services;
- (E) Make an advance partial payment to the Agency for such anticipated services in an amount, acceptable to the Agency, but not to exceed \$5,000 or one-half of the total anticipated costs of the Agency, whichever sum is less; and
- F) Demonstrate, if necessary, authority to act on behalf of or in lieu of the owner or operator.

Section 58.2 specifically defines a Remediation Applicant as any person wishing to perform an investigation and does not limit the definition to the owner.

Similarly, Section 58.7b states that the Agency **may** require a demonstration of authority to act on behalf of the owner but does not require the Agency to obtain such a document. Section 740.210 of the Administrative Code is inconsistent with Section 58.7b in that it states the Agency **shall** obtain written consent of the owner. This is a general standard that the Board has the authority to adjust without violating the statute.

Wherefore Petitioner prays that the Board reconsider the Petition and grant the relief requested.

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

A handwritten signature in black ink, reading "Llewellyn Kennedy", written over a horizontal line.

847-509-0015

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Certificate of Service

I, the undersigned, certify that I have served the attached Brief re Adjusted Standard, by depositing in the US Postal Service first class postage prepaid on July 17, 2009, upon the following persons:

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