



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

MATHER INVESTMENT PROPERTIES,) )  
L.L.C., ) )  
 ) )  
Petitioner, ) )  
 ) )  
vs. ) )  
 ) )  
ILLINOIS STATE TRAPSHOOTERS ) )  
ASSOCIATION, INC., ) )  
 ) )  
Respondent. ) )

Case No. 05-29

**RESPONDENT'S MOTION FOR LEAVE TO FILE REPLY IN SUPPORT OF MOTION  
FOR STAY INSTANTER**

NOW COMES Respondent, ILLINOIS STATE TRAPSHOOTERS ASSOCIATION, INC., by its undersigned attorneys, pursuant to Section 101.500(e) of the Board's Procedural Rules (35 Ill. Admin. Code § 101.500(e)), and moves for leave to file a reply *instanter*, stating as follows:

1. On June 2, 2005, Petitioner received a copy of the Petitioner's Response to Motion for Stay.
2. Said Response raised several issues not addressed in Petitioner's Motion for Stay. Only in the last paragraph of its Response (¶ 7) do Petitioners respond to the issue raised in Petitioner's Motion for Stay. Respondent would be prejudiced if unable to respond to new issues that it could not anticipate in its initial motion.
3. The Board is authorized to grant leave to file a reply if sought within fourteen days after service of the response.
4. Attached hereto is a Reply in Support of Motion for Stay, which Respondent asks leave to file *instanter*.

WHEREFORE, Respondent prays for an order giving it leave to file the attached reply *instanter*, or for such other relief as the Board deems meet and just.

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ESDI v. White & Brewer Trucking, PCB Nos. 96-180 & 97-11 (Mar. 21, 1996 & Sept. 18, 1997). The grounds for each type of relief differ. In any event, the Board has yet to make its duplicative determination in this case (Order of March 3, 2005), and is certainly authorized to find the complaint to be duplicative without a motion from any party. (415 ILCS 5/31(d))

4. Petitioner's complaint that it will be prejudiced by any delay (Resp. at ¶ 5), overlooks the fact that any prejudice is its own doing. Petitioners filed suit in the Circuit Court of Sangamon County in May of 2003, more than a year before filing this action before the Board. Since the Circuit Court complaint also seeks corrective action costs, it is misleading to suggest that the "environment loses" if a stay is entered. Petitioner's primary complaint is one of a lost business opportunity; the environment is being invoked opportunistically with respect to conditions Petitioners claim to have existed for more than fifty years (Compl. at ¶ 12) and for which remediation began three years ago. (Compl. at ¶ 18 & ¶ 19)

5. With respect to Petitioner's only attempt to discuss the factors to be considered in issuing a stay, Petitioner again conflates duplicitous determinations with motions for stay. (Resp. at ¶ 7) The crucial inquiry is not whether the environmental enforcement action arises under a different legal theory, but whether the underlying events arise from "the same transaction or occurrence." Village of Mapleton v. Cathy's Tap, 313 Ill. App. 3d 264, 266 (3<sup>rd</sup> Dist. 2000).

WHEREFORE, Respondent prays for an order, staying this action or for such other relief as the Board deems meet and just.

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