

ILLINOIS POLLUTION CONTROL BOARD

June 21, 2001

MAC INVESTMENTS d/b/a OLYMPIC)
OLDSMOBILE ,)
)
Petitioner,)
)
v.) PCB 01-129
) (UST – Appeal)
OFFICE OF THE STATE FIRE MARSHAL,)
)
Respondent.)

ORDER OF THE BOARD (by M. McFawn):

On March 19, 2001, petitioner Mac Investments, doing business as Olympic Oldsmobile (Mac Investments) filed a petition for review with the Board pursuant to Section 57.9(c)(2) of the Environmental Protection Act (Act) (415 ILCS 5/57.9(c)(2) (2000)), and Sections 105.500-105.510 of the Board's procedural rules (35 Ill. Adm. Code 105.500-105.510). The petition asks the Board to reverse the Office of the State Fire Marshal's (OSFM) determination that a \$15,000 deductible applied to an underground storage tank (UST) at Mac Investment's property located at 3350 N. Cicero Ave., Cook County, Chicago, Illinois (site). On May 22, 2001, OSFM filed an answer to the petition. In its answer, OSFM denied several of the allegations raised in the petition, and asked that the Board dismiss the petition with prejudice, and award OSFM costs and fees and such other relief that the Board deems just and proper. Mac Investments has not requested leave to file a response to OSFM's answer.

PROCEDURAL ISSUES

The Board has identified two procedural issues that must be addressed. First, the Board has identified some informational deficiencies in Mac Investment's petition. Second, OSFM has not filed the complete record of this proceeding with the Board as required by a previous Board order and the Board's procedural rules.

Petition Deficiencies

Section 105.506 of the Board's procedural rules sets forth the information that must be included in a petition to appeal a final determination of the OSFM. That section states that a petition must include, among others:

- b) A complete and precise description of the underground storage tank site, including the location of the site, including the county, the number of underground storage tanks on-site, the substance(s) stored in each tank, the

date of the tank's registration; and the date of Illinois Emergency Management Agency [IEMA] notification 35 Ill. Adm. Code 105.506(b).

The petition states that Mac Investments "owns the property commonly known as 3350 N. Cicero Ave., Chicago (Cook County) . . . at which six [USTs] were formerly located." Pet. at 1.¹ However, the petition does not state what, if any, substances were stored in any of these tanks, any applicable date of registration, or the date, if any, that Mac Investments notified IEMA. The Board also notes that OSFM requests "strict proof of the legal description" of the site, and that OSFM "has knowledge of nine (9) underground petroleum storage tanks" at the site. Ans. at 1.²

The Board requires the information set forth in Section 105.506(b) before the parties present this matter at hearing. Therefore, the Board orders Mac Investments to file a supplement to the petition containing the following information: the substances stored in the USTs located at the site; the date of registration for any USTs at the site, and; the date or dates Mac Investments notified IEMA. Mac Investments must file the supplement to the petition with the Board no later than July 6, 2001. Mac Investments may also include in the supplement to the petition a full legal description of the site, which is described in the answer as "the property commonly known as 3350 N. Cicero Ave., Chicago (Cook County), Illinois." Pet. at 1. If Mac Investments is unable to procure this information before July 6, 2001, Mac Investments must present this information at hearing.

OSFM Deficiencies

Section 105.508(b) of the Board's regulations states, in pertinent part, that "[t]he OSFM must file the entire record of its decision with the Board in accordance with Section 105.116 of this Part." 35 Ill. Adm. Code 105.508(b). Section 105.116 requires the relevant State agency to file "the entire record of its decision with the Board within 30 days after the filing of the petition for review . . ." 35 Ill. Adm. Code 105.116. The Board's April 5, 2001 order that accepted this matter for hearing also stated that OSFM must file the entire record of its decision within 30 days of notice of the petition. Mac Investments v. OSFM (April 5, 2001), PCB 01-129.

The petition was filed on March 19, 2001. OSFM was required by Board regulations and a specific Board order to file the entire record no later than April 18, 2001. To date, OSFM has not filed the record in this matter. The Board orders OSFM to file the entire record no later than July 6, 2001.

The Board also reminds both parties that Section 101.800 of the Board's procedural rules allow the Board to impose sanctions against any person who unreasonably fails to comply with any provision of the Board's procedural rules, including those applicable to petitions for review of final OSFM action, or any order entered by the Board or the hearing officer. 35 Ill. Adm. Code 101.800.

PRAYER FOR DISMISSAL

¹ Mac Investment's March 19, 2001 petition will be referred to as "Pet. at ___."

² OSFM's May 22, 2001 answer will be referred to as "Ans. at ___."

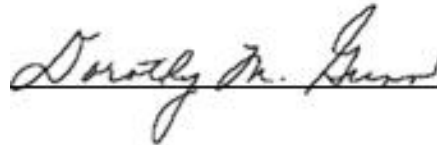
At the conclusion of the answer OSFM asks the Board to “dismiss with prejudice Petitioner’s claims set forth in the petition and award [OSFM] its costs and fees and such other relief as the Board deems just and proper.” Ans at 8. Currently the only documents of record in this case are the petition and the answer. Without the complete OSFM record, the Board cannot determine any relevant facts that would be necessary to determine the appropriate disposition of Mac Investments’ petition. The Board will at this time interpret OSFM’s request as a standard prayer for relief, and not as a motion to dismiss or a motion for summary judgement. Once OSFM files the entire record with the Board, both parties may file any motions they deem appropriate.

CONCLUSION

Mac Investments must file a supplement to the petition no later than July 6, 2001, containing the information discussed above. OSFM must file the entire record in this matter no later than July 6, 2001.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 21st day of June 2001 by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board