

ILLINOIS POLLUTION CONTROL BOARD

May 2, 1996

RALEIGH REALTY CORPORATION,)	
)	
Petitioner,)	
)	
v.)	PCB 96-52
)	(UST - Reimbursement)
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by G.T. Girard):

This matter involves the Illinois Environmental Protection Agency’s (Agency) final determination regarding reimbursement of Raleigh Realty Corporation’s (Raleigh) costs for removing five leaking underground storage tanks located on its property at 11501 S. Kedzie in Merrionette Park, Illinois. The Agency denied reimbursement costs on April 4, 1995 pursuant to Sections 57.8(I) and 40(a) of the Illinois Environmental Protection Act (Act). On September 8, 1995 the Agency filed a Joint Request for 90-Day Extension which was granted by Board order on September 21, 1995. Raleigh filed its petition for appeal on December 6, 1995.

The parties in this matter have since filed a number of motions, cross-motions and responses. For purposes of clarity, this order will list the filings in chronological order, and then address the Agency’s Motion to Consolidate, and all subsequent filings related to it. The Board reserves ruling on Raleigh’s Motion for Summary Judgment and the Agency’s Cross-Motion for Summary Judgment, and all subsequent filings pertinent thereto.

PROCEDURAL HISTORY

On March 11, 1996 Raleigh filed a Motion to File Petitioner’s Motion for Summary Judgment in Excess of Fifteen Pages; a Motion to File a Reply Brief in the Event that the Agency Files a Response; and a Motion for Summary Judgment. On March 21, 1996 the Board granted Raleigh’s Motion to File Petitioner’s Motion for Summary Judgment in Excess of Fifteen Pages, and reserved ruling on the other motions until the deadline for the Agency to file its response had expired on March 22, 1996. On March 27, 1996 the Agency filed its Response to Petitioner’s Motion for Summary Judgment and a Cross-Motion for Summary Judgment in Excess of Fifteen Pages.

On April 3, 1996 Raleigh filed a Motion to Strike the Agency’s Response Brief and Cross Motion for Summary Judgment; a Motion to File a Reply Brief in Excess of Fifteen Pages; and its Reply Brief in Support of Its Motion for Summary Judgment. On April 5, 1996 the Agency filed a Motion to Consolidate.

On April 12, 1996 the Agency filed a Response to Raleigh's April 3, 1996 Motion to Strike; an Objection to Petitioner's Motion to File its Reply Brief in Excess of Fifteen Pages; a Motion to Strike Raleigh's Reply Brief; a Motion to Strike Raleigh's Motion to Strike; a Motion to Strike Any Response to the Agency's Cross-Motion for Summary Judgment; a Request to File a Response to Raleigh's Reply Brief; a Motion to File a Response in Excess of Fifteen Pages; and, its Response to Raleigh's Reply Brief. On April 15, 1996 Raleigh filed a Motion to Deny the Agency's Motion to Consolidate.

On April 18, 1996 the Board received a letter from Raleigh requesting guidance concerning the necessity of replying to the Agency's filings. By Hearing Officer Notice dated April 23, 1996 the parties were informed that the Board cannot offer advice but referred the parties to the procedural rules governing motion practice before the Board. On April 23, 1996 Raleigh filed its Responses to Various Agency Motions. The Board received the Agency's Motion to Strike Petitioner's Motion to Deny the Agency's Motion to Consolidate on April 29, 1996. On April 30, 1996 Raleigh's and Kathe's Auto Service Center filed a Joint Motion to Deny the Agency's Motion to Strike Petitioner's Motion to Deny the Agency's Motion to Consolidate.

MOTION TO CONSOLIDATE

On April 5, 1996 the Agency filed a Motion to Consolidate, requesting that this matter be consolidated with PCB 96-102, Kathe's Auto Service Center v. Illinois Environmental Protection Agency. Kathe's Auto Service is located at 835 Milwaukee Avenue, Glenview, Illinois. On April 15, 1996 Raleigh filed its Motion to Deny the Agency's Motion to Consolidate. Thereafter, the Board received the Agency's Motion to Strike Petitioner's Motion to Deny the Agency's Motion to Consolidate on April 29, 1996. On April 30, 1996 Raleigh and Kathe's Auto Service Center filed a Joint Motion to Deny the Agency's Motion to Strike Petitioner's Motion to Deny the Agency's Motion to Consolidate.

In its Motion to Strike Petitioner's Motion to Deny, the Agency asserts that Raleigh missed the filing deadline for its Motion to Deny. The Agency contends that it personally served its Motion to Consolidate on April 5, 1996 at the offices of Raleigh's attorney. The Agency argues that pursuant to 35 Ill. Adm. Code 101.241(b), any response to its motion was due on or before April 12, 1996 and since Raleigh's response was filed on April 15, 1996 it is therefore untimely and should be stricken. In response, Raleigh asserts that no one at its attorney's offices was served with the Agency's Motion on April 5, 1996 but that a copy was received and date stamped on April 8, 1996; therefore its April 15, 1996 filing is timely. Both the Agency and Raleigh support their positions by affidavit.

Due to the conflict in service evidence before us, we accept Raleigh's Motion to Deny the Agency's Motion to Consolidate as timely filed and deny the Agency's Motion to Strike. For the reasons set forth below the Board denies the Agency's Motion to Consolidate.

In its Motion to Consolidate, the Agency, without citing any authority, argued that consolidating these two cases would be proper because the issues are identical; both parties used the same environmental consultant; and the Board's hearing officer and the parties' attorneys are identical. The Agency further asserted that consolidation in this matter would promote the interests of convenience, judicial efficiency and expeditious resolution.

Raleigh opposes the motion, stating that consolidation is only appropriate when two separate causes of action are similar in nature; arise from the same act or event; involve the same or like issues; and depend largely on the same evidence. Raleigh asserts that consolidation of its case with Kathe's Auto Service Center is not appropriate because the two cases arise from separate facts; involve two different parties and two different locations; and depend on different evidence. Raleigh further argues that neither the Illinois Rules of Civil Procedure nor the Board's regulations permit the consolidation of motions for summary judgment brought by different parties in different matters. Finally, Raleigh argues that it would be greatly prejudiced if the matters were consolidated because consolidation would cause confusion and complicate the pleadings, hearings, and rulings.

The Board denies the Agency's Motion to Consolidate. As Raleigh correctly indicated, consolidation of two separate actions is proper if they are similar in nature; arise from the same act or event; involve the same or like issues; and depend largely on the same evidence, without allowing prejudice to a substantial right of one or more of the parties. (Richard/Allen/Winter, Ltd. v. Waldorf, 156 Ill. App.3d 717, 509 N.E.2d 1078 (1987); 735 ILCS 5/2-1006 (1994).) The two separate actions at issue here involve two different locations, two different complainants; and two different set of facts. While the Board appreciates the Agency's concern for conserving resources for all entities involved, the Board does not find consolidation appropriate when it has the potential to cause great confusion, as in this instance.

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 ____ day of _____, 1996, by a vote of

_____.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board