

ELECTRONIC FILING, RECEIVED, CLERK'S OFFICE, JUNE 7, 2005

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

MATHER INVESTMENT PROPERTIES,)	
L.L.C.,)	
Complainant,)	
)	
v.)	Case No. 05-29
)	
ILLINOIS STATE TRAPSHOOTERS)	
ASSOCIATION, INC.,)	
Respondent.)	

NOTICE OF FILING AND PROOF OF SERVICE

TO: Dorothy Gunn, Clerk, Illinois Pollution Control Board, 100 West Randolph Street,
James R. Thompson Center, Suite 11-500, Chicago, IL 60601-3218;

Carol Webb, Hearing Officer, Illinois Pollution Control Board, 1021 North Grand Avenue
East, P.O. Box 19274, Springfield, IL 62794-9274; and

R. Gerald Barris, Sorling, Northrup, Hanna, Cullen & Cochran, Suite 800 Illinois Building,
607 East Adams, P.O. Box 5131, Springfield, IL 62705

Richard Ahrens, Lewis, Rice & Fingersh, 500 N. Broadway, Suite 2000, St. Louis, MO
63102-2147

PLEASE TAKE NOTICE that on June 7, 2005, I filed the original Respondent's Motion
For Leave to File Reply in Support of Motion For Stay Instanter and the Reply In Support of
Motion For Stay Instanter with the Office of the Clerk of the Pollution Control Board by electronic
filing with the Clerk's Office On-Line (COOL).

The undersigned certifies that he served the Motion For Leave to File Reply in Support
of Motion For Stay Instanter and the Reply In Support of Motion For Stay Instanter by mailing a
copy to the above persons by U.S. Mail on June 7, 2005.

Respectfully submitted,

ILLINOIS STATE TRAPSHOOTERS
ASSOCIATION, INC., Respondent,

BY: MOHAN, ALEWELT, PRILLAMAN & ADAMI

BY: /s/ Fred C. Prillaman
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C:\MAPA\Trapshooters\PCB\Trapshooters Reply Stay.wpd llm

Case No. 05-29

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

MOHAN, ALEWELT, PRILLAMAN & ADAMI

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Attorneys for Respondent Illinois Trapshooters
Association, Inc.

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.

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Case No. 05-29

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REPLY IN SUPPORT OF MOTION FOR STAY INSTANTER

NOW COMES Respondent, ILLINOIS STATE TRAPSHOOTERS ASSOCIATION, INC., by its undersigned attorneys, and in further support of its Motion for Stay, states as follows:

1. Petitioner states that the parties have engaged in good faith, but unsuccessful, negotiations to settle the case. (Resp. at ¶ 1) In fact, the parties agreed to settle both the circuit court action and this Board proceeding. This dispute is currently the subject of a motion to enforce the settlement filed with the Circuit Court of Sangamon County.

2. Petitioner conflates preliminary injunctions with stays. (Resp. at ¶ 4) Respondents are not required to satisfy the requirements for obtaining a preliminary injunction in order to seek a stay of subsequent litigation. Vasa North Atlantic Ins. Co. v. Selcke, 261 Ill. App. 3d 626, 628 (1st Dist. 1994). The Respondent was not required to do so in Environmental Site Developers, v. White & Brewer Trucking, PCB Nos. 96-180 & 97-11 (Sept. 18, 1997).

3. Petitioner further conflates duplicitous determinations with motions for stay. The Board has previously stayed a proceeding that was not deemed to be duplicitous.

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 (3rd 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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