

ILLINOIS POLLUTION CONTROL BOARD

June 6, 1996

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

ORDER OF THE BOARD (by J. Theodore Meyer):

This matter comes before the Board on a December 6, 1995 petition for review filed by Raleigh Realty Corporation (Raleigh) pursuant to sections 40(a) and 57.8(i) of the Illinois Environmental Protection Act (Act)(415 ILCS 5/40(a); 415 ILCS 57.8(i) (1994). Raleigh seeks review of particular costs denied by the Illinois Environmental Protection Agency (Agency) for eligibility for reimbursement from the Illinois Underground Storage Tank Fund (UST Fund).

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 after 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, and Raleigh filed a Motion to Deny the Agency's Motion to Consolidate on April 15, 1996. The Board denied the Agency's Motion to Consolidate at its May 2, 1996 meeting.

On April 12, 1996 the Agency filed a Response to Raleigh's April 3rd 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 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. On May 1, 1996, Raleigh filed a status report which outlined the aforementioned filings, and stated that Raleigh sent a settlement demand letter to the Agency on April 3, 1996 without response. Finally, on May 28, 1996 the parties filed a Joint Motion to Withdraw Various Motions and Responses.

DISCUSSION

For the sake of clarity and brevity, the Board will first address the parties' most recent filing. In their Motion to Withdraw Various Motions and Responses, the parties state that, in light of their desire to have their respective motions for summary judgment decided on the merits, the parties will withdraw several motions currently before the Board in this matter. Specifically, Raleigh wishes to withdraw its Motion to Strike the Agency's Response Brief and Cross Motion for Summary Judgment, as well as its Responses to Various Agency Motions. The Agency would like to withdraw its Objection to Petitioner's Motion to File its Reply Brief in Excess of Fifteen Pages, its Motion to Strike the Petitioner's Reply Brief in Support of its Motion for Summary Judgment, and its Motion to Strike the Petitioner's Motion to Strike the Agency's Response and Cross-Motion for Summary Judgment and any Response Filed by the Petitioner in Response to the Agency's Cross-Motion for Summary Judgment.

The Board grants the parties' joint motion and strikes the aforementioned filings.¹ In addition, the Board will strike as moot the Agency's Response to Petitioner's Motion to Strike the Agency's Response Brief and Cross-Motion for Summary Judgment, filed on April 12, 1996.

We next address Raleigh's request to file a reply brief in answer to the Agency's Response to Raleigh's Motion for Summary Judgment. According to Board regulations, "the moving party shall not have the right to reply, except as permitted by the Board or the hearing officer to prevent material prejudice". (35 Ill. Adm. Code

¹ The parties' motion to strike relieves the Board of its concern that these parties, by filing numerous motions, had lost sight of the pertinent issues in this matter. Although the Board accepts and considers all relevant motions before it, the Board frowns upon frivolous filings.

101.241(c).) In its Response to Raleigh's Motion for Summary Judgment, the Agency set forth issues and arguments not contemplated by Raleigh in its Motion for Summary Judgment. We believe material prejudice would result if Raleigh were denied the opportunity to address those issues and arguments; therefore, the Board grants Raleigh's Motion to File a Reply in Excess of Fifteen Pages, and accepts its Reply Brief.

After Raleigh filed its Reply, the Agency filed a Response to Raleigh's Reply. The parties' May 28, 1996 joint motion requested that the Agency's various motions concerning its Response to Petitioner's Reply Brief remain pending before the Board. However, Board regulations do not allow a party to file a response to a reply; therefore, the Board denies the Agency's Request to File a Response to Raleigh's Reply, denies its Motion to File a Response in Excess of Fifteen Pages and declines to accept its Response. The parties have adequately presented their respective positions and we believe that an acceptance of this filing would only serve to encourage parties to continually litigate previously stated arguments, simply to have the last word.

As a result of today's order, the remaining filings will be addressed in a future Board order: Raleigh's Motion for Summary Judgment, the Agency's Response and Cross-Motion for Summary Judgment, and Raleigh's Reply.

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