

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PMA & ASSOC., INC., *Petitioner*, )  
v. ) PCB No. 07-063  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, *Respondent*. )

T-TOWN DRIVE THRU, INC., *Petitioner*, )  
v. ) PCB No. 07-085  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, *Respondent*. )

REED'S SERVICE, *Petitioner*, )  
v. ) PCB No. 07-108  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, *Respondent*. )

2F, INC., *Petitioner*, )  
v. ) PCB No. 07-076  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, *Respondent*. )

BOB'S SERV. CENTER, INC., *Petitioner*, )  
v. ) PCB No. 07-082  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, *Respondent*. )

L.W. PAUL SUPPLY CO., INC., *Petitioner*, )  
v. ) PCB No. 07-099  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, *Respondent*. )

RUTH OIL CO., INC., *Petitioner*, )  
v. ) PCB No. 07-120  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, *Respondent*. )

MAHR'S SERVICE & SALES, *Petitioner*, )  
v. ) PCB No. 07-119  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, *Respondent*. )

GATEWAY FS, INC., *Petitioner*, )  
v. ) PCB No. 07-126  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, *Respondent*. )

PIONEER OIL CO., *Petitioner*, )  
v. ) PCB No. 07-127  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, *Respondent*. )

GALLAHER'S SHELL, *Petitioner*, )  
v. ) PCB No. 07-130  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, *Respondent*. )

JAHRAUS OIL CO., INC., *Petitioner*, )  
v. ) PCB No. 07-128  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, *Respondent*. )

RUSSELL OIL CO., INC., *Petitioner*, )  
v. ) PCB No. 07-137  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, *Respondent*. )

WATERTOWER MARINA, INC., *Petitioner*, )  
v. ) PCB No. 07-138  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, *Respondent*. )

YESLEY SERVICE CO., INC., *Petitioner*, )  
v. ) PCB No. 07-129  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, *Respondent*. ) (LUST Appeals)

**PETITIONERS' MOTION TO CONSOLIDATE**

Pursuant to 35 ILL. ADM. CODE § 101.406, PMA & Assoc., Inc. ("PMA"); T-Town Drive Thru, Inc. ("T-Town"); Reed's Service; 2F, Inc.; Bob's Service Center, Inc.; L.W. Paul Supply Co., Inc.; Ruth Oil Co., Inc.; Mahr's Service & Sales; Gateway FS, Inc.; Pioneer Oil Co.; Gallaher's Shell; Jahraus Oil Co., Inc.; Russell Oil Co., Inc.; Water-tower Marina, Inc.; and Yesley Service Co., Inc., the respective petitioners in the above-captioned LUST appeals (collectively, "Petitioners"; individually, "Petitioner"), by their attorneys, The Sharp Law Firm, P.C., move to consolidate the above-captioned appeals for purposes of briefing, hearing and decision on motions for summary judgment.

In support, Petitioners state:

1. Each of the above-captioned appeals involves a decision by the Illinois Environmental Protection Agency ("Agency") denying reimbursement of the Petitioner's analysis costs on the basis that the payment request lacked supporting documentation. In each case, the Agency denied the requested payment on the ground that the Petitioner had not submitted invoices received by Petitioner's consultant for a part of services at issue.<sup>1</sup>

2. In each of the appeals, the Agency denied reimbursement for amounts which had been approved for analysis costs in a previously-approved budget.

3. In each of the appeals, the Agency denied reimbursement for amounts established as reasonable in 35 ILL. ADM. CODE Part 732 Subpart H or 35 ILL. ADM.

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<sup>1</sup> In certain cases the Agency also stated that the claim was for "costs for analysis that are not reasonable as submitted", but that contention poses the same legal issues as in the other matters, and the sole "unreasonable" aspect identified is the failure to submit the invoices of the sub-contractor who performed some of the services at issue.

CODE Part 734 Subpart H, as applicable.

4. During the evolution of the dispute to which each of these appeals relates, counsel for the Agency and counsel for Petitioners have discussed the same, its essentially legal nature, and the desirability of its resolution by settlement or by summary judgment on a basis which would avoid presentation of multiple motions and the conduct of multiple hearings. After the prospect of settlement ended, the Agency filed its *Motion for Summary Judgment* in the PMA case on August 10, 2007. PMA filed its *Petitioner's Response to Respondent's Motion for Summary Judgment* ("Response") on August 28, 2007.

5. On September 12, 2007 T-Town filed its *Petitioner's Motion for Summary Judgment* ("Motion") in the T-Town matter. The law and analysis sections of that Motion are almost identical to the comparable sections of the Response filed in the PMA case.

6. It is well-established that on appeal to the Board the Agency's denial letter frames the issues to be reviewed and the Board focuses only on the grounds stated in the decision in determining whether it may be affirmed. Pulitzer Comm. Nsprs., Inc. v. IEPA, 90-142 at 9-7 (Dec. 20, 1990). The identity of the issues for review in the following cases thus is established by the decision letters attached to the Petitions for Review respectively filed therein on the dates stated:

- a. Reed's Service, PCB No. 07-108 (May 8, 2007);
- b. 2F, Inc., PCB No. 07-076 (Feb. 9, 2007);
- c. Bob's Service Center, Inc., PCB No. 07-082 (Feb. 28, 2007);
- d. L.W. Paul Supply Co., Inc., PCB No. 07-099 (Apr. 2, 2007);
- e. Ruth Oil Co., Inc., PCB No. 07-120 (Aug. 23, 2007);
- f. Mahr's Service & Sales, PCB No. 07-119 (Aug. 24, 2007);
- g. Gateway FS, Inc., PCB No. 07-126 (Sept. 7, 2007);
- h. Pioneer Oil Co., PCB No. 07-127 (Sept. 7, 2007);

- i. Yesley Service Co., Inc., PCB No. 07-129 (Sept. 11, 2007)
- j. Gallaher's Shell, PCB No. 07-130 (Sept. 12, 2007); and
- k. Jahraus Oil Co., Inc., PCB No. 07-128 (Sept. 12, 2007).

7. The identity of the issues for review in the following cases, in which petitions for review are not yet filed but are imminent, is established by the decision letters attached to the motions for extension filed on the dates respectively stated:

- a. Russell Oil Co., Inc., PCB No. 07-137 (June 11, 2007); and
- b. Watertown Marina, Inc., PCB No. 07-138 (June 11, 2007).

8. In addition to the above-stated actions which are currently before the Board, the same issue is presented in the following matters, in which, through cooperation of the parties, the date for the Agency to issue a decision has been extended so that the Agency can apply to said matters the result which is obtained in the above-captioned appeals:

- a. Ralph Johnson, Incident No. 950344;
- b. Mobil Mart, Incident No. 20000728;
- c. Veach Service, Incident No. 20001628;
- d. Veach Oil, Incident No. 20001756;
- e. Auburn Realty, Incident No. 20010264;
- f. Ozark General Store, Incident No. 20010095;
- g. Tomy's Kwik Chek, Incident No. 20010342;
- h. Schleifer Petroleum, Incident No. 20011637;
- i. Ron's One Stop #15, Incident No. 20011549;
- j. Sheffield Farm House, Incident No. 992695;
- k. A-J Enterprises, Incident No. 20020265;
- l. Spectrulite Consortium, Incident No. 892600;
- m. Haneghan's Amoco, Incident No. 20021239;
- n. Koch Uptown Shell, Incident No. 940768;
- o. ND Inc/Harold Hart Service, Incident No. 20021214;
- p. Mt. Vernon S & W Motors, Incident No. 20030775;
- q. Public Works Shop, Incident No. 951643;
- r. True Value Petroleum Co., Incident No. 20002336;
- s. Knapp Oil Co., Incident No. 20031670;
- t. Karco, Inc., Incident No. 20040593;
- u. Veach Oil Co., Incident No. 20041199;
- v. Ted's Citgo, Incident No. 981745;
- w. Thomas, Coy, Incident No. 991984;

- x. Airline Standard, Incident No. 940692;
- y. Sarus Oil LLC, Incident No. 20051115;
- z. Schreiner Oil, Incident No. 971155;
- aa. Maribeth, Inc., Incident No. 20060567;
- bb. Sarus Oil LLC, Incident No. 20060332;
- cc. Yorkville Marathon, Incident No. 20060740;
- dd. Moto, Inc., Incident No. 20020431;
- ee. FKG Oil Co., Incident No. 20021572;
- ff. Moto, Inc., Incident No. 980730;
- gg. Grahams Service, Incident No. 20060626;
- hh. Maribeth, Inc., Incident No. 20060816;
- ii. Twin County Service Co., Incident No. 982521;
- jj. Streuter Chevrolet, Incident No. 982881;
- kk. Muriel Brown Via Judy Story, Incident No. 983125;
- ll. Biggs Brothers Service Center, Incident No. 990762;
- mm. John Zink, Inc., Incident No. 992540;
- nn. Tasim Fejfza, Incident No. 941095, and
- oo. Old National Bank, Incident No. 991564.

9. Although the amount at issue in a particular case is in many instances small, the collective impact of the issue is significant (over \$145,000 to date,<sup>2</sup> with additional matters accruing) and justifies the Board's coherent and thorough attention, which can best and most efficiently be obtained by consolidating the above-referenced appeals for briefing, hearing and decision of motions for summary judgment.

10. Separate briefing will result in duplicative effort and filings, as the bulk of the memoranda in each appeal will be identical. Accordingly, Petitioners propose to file brief motions for summary judgment in the actions other than T-Town (where a more thorough motion already has been filed), limiting those motions to establishment of the factual showing in the particular case, and then to file a single consolidated legal memorandum in support thereof.

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<sup>2</sup> In each of the cases referenced in ¶¶ 4-8 the Petitioner's consultant has been United Science Industries, Inc., which is an additional common fact favoring consolidation. However, assuming the Agency has applied the same approach to reimbursement requests involving other consultants, the significance of the issue would be even larger than the \$145,000 sum stated.

11. Consolidation of these matters for briefing, hearing and decision of motions for summary judgment will result in a more expeditious and complete determination of the issues and will not prejudice any party. Indeed, it likely will result in savings in paperwork and effort for the Agency analogous to those for Petitioners.

WHEREFORE, Petitioners pray that the above-referenced matters be consolidated for briefing, hearing and decision of motions for summary judgment.

September 12, 2007

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CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that I served the foregoing document upon all persons entitled to same by causing copies to be deposited in the United States Post Office mailbox at 14th and Main Streets, Mt. Vernon, IL, before 6:00 p.m. this date, in envelopes with proper first-class postage affixed, addressed as follows:

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