

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

S&D REALTY, INC.,)
Petitioner,)
)
v.) PCB 09-33
) (LUST Appeal)
ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
Respondent.)

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MAR 15 2010

STATE OF ILLINOIS
Pollution Control Board

NOTICE OF FILING AND PROOF OF SERVICE

TO: Pollution Control Board, Attn: Clerk James G. Richardson
100 West Randolph Street Illinois Environmental Protection Agency
James R. Thompson Center, Suite 11-500 1021 North Grand Avenue East
Chicago, Illinois 60601 P.O. Box 19276
Springfield, Illinois 62794-9276

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 W. Randolph Street
Chicago, Illinois 60601

PLEASE TAKE NOTICE that on this day, March 11, 2010, we filed with the office of the Clerk of the Illinois Pollution Control Board an original and nine copies of Petitioner's Clarification to the Hearing Officer Order Dated March 8, 2010, copies of which are enclosed herewith and hereby served upon you.

The undersigned hereby certifies that a true and correct copy of this Notice of Filing, together with copies of the documents described above, were today served upon the hearing officer and counsel of record of all parties to this cause by enclosing same in envelopes addressed to their business addresses as disclosed by the pleadings of record herein, with postage fully prepaid, and by depositing same in the U.S. Mail in Worth, Illinois on March 11, 2010.

S&D Realty Inc.

By: Michael Abel
One of its Attorneys

Edward Cohen
Michael Abel
Law Offices of Cohen and Hussien, P.C.
Attorney Number: 39565
Attorneys for Petitioner
11330 S. Harlem Avenue
Worth, Illinois 60482
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THIS FILING SUBMITTED ON RECYCLED PAPER

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CLARIFICATION TO THE HEARING OFFICER ORDER DATED MARCH 8, 2010

NOW COMES the Petitioner, S&D Realty, Inc. (hereinafter "Petitioner"), by and through its attorneys, the Law Offices of Cohen & Hussien, P.C., and for its Clarification to the Hearing Officer Order dated March 8, 2010, states as follows:

On March 8, 2010, the Hearing Officer for the above-referenced matter entered an order regarding the Respondent's Motion In Limine. While the Order did not rule on the merits of the Respondent's Motion, the Hearing Officer requested that the Petitioner clarify and confirm the amounts that the Respondent awarded to the Petitioner in its reimbursement decision letter dated October 10, 2008. According to the letter, the Petitioner requested \$153,801.58 in reimbursements. A \$10,000.00 deductible was deducted from that amount leaving \$143,801.58. Of that amount, the Respondent only awarded \$38,240.00 to the Petitioner for reimbursement. Upon review of Attachment A to the reimbursement letter, the Respondent itemized the amounts not eligible for reimbursement: \$13,340.08 was denied for not being eligible for reimbursement and \$98,760.00 (which was broken down into \$46,960.00 for remediation and disposal costs and \$51,800.00 for paving and demolition costs) was denied for not having backup invoices, totaling

\$112,100.08. However, after adding together the amount actually reimbursed, the amount denied, and the amount of the deductible, the total is \$160,366.08, or \$6,564.50 more than what the Petitioner requested in the first place.

Upon review of the Respondent's Administrative Record, it appears the Respondent is correct in that there was a typographical error in the reimbursement decision letter. The \$98,760.00 that was denied for not having backup invoices should actually be \$92,221.50, in accordance with the Respondent's Motion. The \$46,960.00 for remediation and disposal costs should actually be \$40,421.50, in accordance with the Respondent's Motion. These corrected amounts are demonstrated throughout the Respondent's Administrative Record. As a result thereof, this does not change the amount of \$38,240.00 that the Respondent previously awarded to the Petitioner. Also, when one adds together the amount actually reimbursed, the amended amount that was denied, and the amount of the deductible, the total is \$153,801.58, which is the amount that the Petitioner sought for reimbursement in the first place.

WHEREFORE, the Petitioner, S&D Realty Inc., respectfully petitions the Illinois Pollution Control Board to deny the Respondent's Motion In Limine and for any other relief deemed just and appropriate.

March 11, 2010

Respectfully Submitted,

By: Michelle Cole
One of the Petitioner's Attorneys

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