

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
 by LISA MADIGAN, Attorney)
 General of the State of Illinois,)
)
 Complainant,)
)
 v.)
)
 THE BOARD OF TRUSTEES OF THE)
 UNIVERSITY OF ILLINOIS, a body corporate)
 and politic,)
)
 Respondent.)

PCB No. 13-36
(Enforcement – Air)

NOTICE OF FILING

To: See attached service list
(VIA ELECTRONIC FILING)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the Complainant's Response to Respondent's Motion to Consolidate Related Proceedings and to Stay the Consolidated Proceedings, a copy of which is attached hereto and herewith served upon you.

LISA MADIGAN
Attorney General
State of Illinois


 JENNIFER A. VAN WIE

Dated: March 15, 2013

Jennifer A. Van Wie
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
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THIS FILING IS SUBMITTED ON RECYCLED PAPER

Service List

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COMPLAINANT’S RESPONSE TO RESPONDENT’S MOTION TO CONSOLIDATE RELATED PROCEEDINGS AND TO STAY THE CONSOLIDATED PROCEEDINGS

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, hereby responds to Respondent’s Motion to Consolidate Related Proceedings and to Stay the Consolidated Proceedings, as follows:

I. Response to Respondent’s Motion to Consolidate Related Proceedings

As pointed out by Respondent, PCB Nos. 13-35 and 13-36 involve the same parties and similar allegations of non-compliance at two (2) separate campus facilities. Complainant has no objection to consolidating People v. The Board of Trustees of the University of Illinois, PCB No. 13-35, with People v. The Board of Trustees of the University of Illinois, PCB No. 13-36, for purposes of convenience and efficiency.

II. Response to Respondent’s Motion to Stay the Consolidated Proceedings

On January 3, 2013, the Board of Trustees of the University of Illinois (the “University”) filed a declaratory judgment action in the Cook County Circuit Court to resolve what it believes is a jurisdictional issue of proper forum for cases involving the University. On February 4, 2013, the Attorney General’s Office filed a Motion to Dismiss pursuant to 735 ILCS 5/2-619.1 and 5/2-

615 in response to the University's declaratory judgment action. On February 13, 2013, the Circuit Court entered a briefing schedule on the Motion to Dismiss, with argument set for April 15, 2013. Additionally, on February 8, 2013, the University filed a Motion for Summary Judgment. Briefing on that motion was stayed pending the outcome of the Motion to Dismiss.

Complainant agrees that given the expedited pace at which the declaratory judgment action is currently proceeding, it would be prudent to enter a motion to stay PCB Nos. 13-35 and 13-36 until such time that the jurisdictional issue is resolved. However, periodic updates on the progress of the declaratory judgment action should be required to ensure that a stay continues to be warranted for the Board matters.

Additionally, Respondent has made a repeated point in its motion that:

- * “none of the alleged violations pose immediate threats to the environment” (Respondent's Motion, Sec. II, ¶ 4),
- * “the University is also currently operating in *general* compliance with the terms of the CAAPP Permits previously issued for the East Campus and the West Campus” (Respondent's Motion, Sec. II, ¶ 5, *emphasis added*),
- * “[t]hus, there is no ongoing pollution concerns at either the East Campus or West Campus locations” (Respondent's Motion, Sec. II, ¶ 7),
- * “the State's claims against the University in these proceedings do not allege any imminent environmental harm; rather, the claims concern past alleged violations that the University has addressed to the extent it can, and a further resolution is now in the hands of the IEPA” (Respondent's Motion, Sec. II, ¶ 7), and;
- * “a stay is justified because these proceedings do not involve the risk of ongoing environmental harm” (Respondent's Motion, Sec. III.C, ¶ 20).

Complainant vehemently denies these statements as fact. Respondent is operating its Clean Air Act Permit Program (“CAAPP”) facilities (the East Campus Facility and West Campus Facility) without the required CAAPP Permits. These are on-going, present violations. The contention that Respondent does not somehow pose an immediate threat to the environment because it has

chosen to *generally* comply with the terms of its expired CAAPP Permits does not render these alleged violations wholly past. In fact, at any point in time the University could unilaterally choose to stop complying with the terms of its expired CAAPP Permits and the State would not have any recourse other than what is presented in these Board cases.

As stated above, the Complainant agrees that a stay is warranted in the short-term given the speed at which the declaratory judgment action is proceeding before the Circuit Court, but requests that periodic statuses be set to ensure that the stay remains justified.

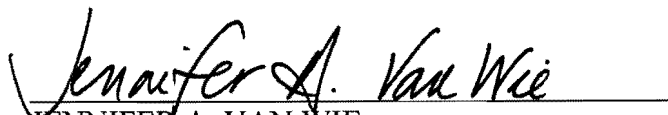
Wherefore, the Complainant, in response to Respondent's Motion to Consolidate Related Proceedings and to Stay the Consolidated Proceedings, does not object to either the consolidation or stay of PCB Nos. 13-35 and 13-36, conditioned upon the request for periodic updates on the progress of the declaratory judgment action.

RESPECTFULLY SUBMITTED:

PEOPLE OF THE STATE OF ILLINOIS,
by LISA MADIGAN, Attorney General
of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY:

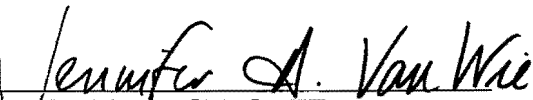


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Date: March 15, 2013

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached Complainant's Response to Respondent's Motion to Consolidate Related Proceedings and to Stay the Consolidated Proceedings and Notice of Filing, by U.S. Certified Mail (return receipt requested), unless otherwise noted, upon the persons listed on the service list.



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Date: March 15, 2013