

ILLINOIS POLLUTION CONTROL BOARD
May 6, 2004

HOME OIL COMPANY,)
)
Petitioner,)
)
v.) PCB 04-172
) (UST Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by N.J. Melas):

On March 26, 2004, Home Oil Company (Home Oil) filed a petition asking the Board to review a determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.404. The Agency denied Home Oil's request for reimbursement from the Underground Storage Tank Fund regarding an underground storage tank (UST) site at 2700 W. Main Street, Belleville, St. Clair County. Home Oil appeals on the grounds that the costs submitted for reimbursement are corrective action costs and are reasonable. The petition was accompanied by a motion to consolidate this case with two earlier filed consolidated cases docketed as PCB 02-205 and PCB 02-206. To date, the Agency has not responded.

As discussed below, the Board cannot accept Home Oil's untimely petition for hearing. The motion to consolidate is therefore denied as moot.

BACKGROUND

Home Oil currently owns land located at 2700 W. Main Street, Belleville, St. Clair County. At this site, Home Oil previously operated a gasoline service station with USTs. Pet. 205, 206 at 1. The USTs were removed in 1991 and Home Oil obtained a Leaking Underground Storage Tank (LUST) incident number (910367). Home Oil, through its environmental consultant, United Science Services, submitted to the Agency a corrective action plan (CAP) dated November 5, 1996 that included groundwater treatment and soil vapor extraction (SVE) systems to address the contamination. Pet. 206 at 1. The Agency approved the CAP on February 21, 1997. Pet. 206, Exh. A.

The Agency received Home Oil's request to be reimbursed \$17,929.09 in corrective action costs from the Illinois UST Fund for the period of July 1, 2002 to August 31, 2002. Pet. Exh. A. On January 28, 2004, the Agency issued its final decision that it would reimburse Home Oil \$9,265.11 of the request. The Agency's letter denied the following costs as unreasonable: (1) \$488.30 in per diem, mileage, and handling charges for lodging; (2) \$6,519.41 for the lease

and installation of a SVE/Vapor Treatment system; and (3) \$1,393.55 for the lease of the Mobile Groundwater System.

In denying certain costs for the lease and installation of the SVA/Vapor Treatment system, the Agency stated that Home Oil must provide the Agency with additional information before the costs would be approved. The Agency identified the additional information as technical specifications on the components of the remediation system and individual costs of the components, the expected life of the remediation system and what Home Oil will do with the system and its components at the end of that life, and any additional costs included in the purchase price of the remediation system.

The Agency's letter stated: "This is the Agency's final action with regard to the above invoices," and explained that Home Oil could appeal the decision to the Board within 35 days, or write the Agency to request a 90-day extension of the appeal period.

On March 2, 2004, Home Oil, through environmental consultant CW³M, sent a letter to the Agency, attached to which was additional information allegedly responsive to the deductions made by the Agency. On March 22, 2004, the Agency rejected Home's response to the Agency's denial letter, identifying the response as "miscellaneous correspondence."

HOME OIL'S PETITION FOR REVIEW

Home Oil petitions the Board to review the Agency's March 22, 2004 letter on the basis that it "relates back" to the Agency's January 28, 2004 letter, in which the Agency limits reimbursement. Pet. at 2. Home Oil argues that the Agency's January 28, 2004 letter "requested additional information and, thus, was not a final decision despite the . . . standard language regarding it being a final decision." *Id.* Home Oil contends the Agency denied reimbursement for rates and procedures that the Agency has approved in the past, and that the rules the Agency uses to approve or deny rates and procedures have not been adopted by the Board and therefore violate the Administrative Procedure Act. *Id.* at 2-3.

DISCUSSION

If an applicant wishes to seek review of an Agency decision denying reimbursement from the UST Fund, the applicant must file an appeal with the Board within 35 days after service of the Agency's final decision. *See* 35 Ill. Adm. Code 105.404. Alternatively, the Board, at the request of both the Agency and the applicant, may extend the time period within which the applicant may appeal by not more than 90 days. However, to get the extension, the parties must request one within the initial 35-day appeal period. *See* 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.406.

For the reasons below, the Board finds that the January 28, 2004 letter is the Agency's final decision on Home Oil's reimbursement request for July 1, 2002 through August 31, 2002, and that Home Oil failed to timely appeal that decision. That Agency letter sets forth the reasons for denying reimbursement and explains how Home Oil may appeal the decision to the Board or request an extension of the time period for appealing. Contrary to Home Oil's assertions, the

fact that the Agency's denial letter identifies what the Agency considers to be the missing information from Home Oil's request does not make the Agency's action any less final. The Agency is required to provide the bases for its decisions.

Upon receipt of the Agency's January 28, 2004 letter, Home Oil could have filed an appeal with the Board or request an extension of the appeal period, but did not. Rather, on March 2, 2004, Home Oil submitted additional information to the Agency that, according to Home Oil, responded to the reimbursement deductions made by the Agency. The Agency's March 22, 2004 letter takes no final action on, and does not address the contents of, Home Oil's March 2, 2004 submission, but instead merely states that the January 28, 2004 letter was the Agency's final action. Home Oil cites no authority for its proposition that the March 22, 2004 Agency letter somehow relates back to the January 28, 2004 Agency letter. The Board finds that the 35-day period for Home Oil to appeal the Agency's January 28, 2004 decision expired on March 4, 2004. Home Oil's March 26, 2004 petition is therefore untimely. Accordingly, the Board cannot accept the petition for hearing.

The Board notes that Home Oil appears to have intended its March 2, 2004 submission to the Agency as an amendment to the reimbursement application, and thus a new application for the Agency to consider. The Agency, on the other hand, characterized the submission as "miscellaneous correspondence" and stated that the passing of the appeal period precluded further Agency review. This suggests that the Agency did not consider Home Oil's March 2, 2004 material a new reimbursement application. The appellate court has held that while the Agency does not have the authority to simply reconsider its final decision, it must consider a new application made in response to a final decision. *See Reichold Chem. v. PCB*, 204 Ill. App. 3d 674, 561 N.E.2d 1333, 1346 (3d Dist. 1990). The Board's decision today in no way precludes Home Oil from submitting a new application for reimbursement to the Agency.

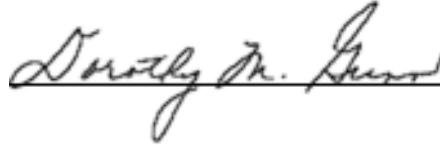
CONCLUSION

The Board does not accept for hearing Home Oil's untimely petition of the Agency's January 28, 2004 letter, and accordingly denies Home Oil's motion to consolidate as moot. The Board therefore dismisses this case and closes the docket.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2002); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 6, 2004, by a vote of 5-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board