

ILLINOIS POLLUTION CONTROL BOARD

August 5, 2004

ILLINOIS AYERS OIL COMPANY,)
)
Petitioner,)
)
v.) PCB 03-214
) (UST Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by G.T. Girard):

Illinois Ayers Oil Company (Ayers), having prevailed before the Board in this underground storage tank appeal, is now seeking reimbursement for legal fees incurred in this proceeding. After careful consideration of the arguments, the Board grants the request and awards Ayers legal fees consistent with Section 57.8(l) of the Environmental Protection Act (Act) (415 ILCS 5/57.8(l) (2002)).

BACKGROUND

On April 1, 2004, the Board reversed in part and affirmed in part a decision by the Illinois Environmental Protection Agency (Agency) concerning Ayers high priority corrective action plan (HPCAP) and budget for Ayers' site in Beardstown, Cass County. Illinois Ayers Oil Company v. IEPA, PCB 03-214 (Apr. 1, 2004). Specifically, the Agency found that 10 of 13 direct push soil borings proposed by Ayers were in excess of the minimum requirements of Title XVI of the Act (415 ILCS 5/Title XVI (2002)) because the soils were previously classified. Ayers, slip. op. at 5. The Board reversed the Agency's modification to the HPCAP with regards to the number of soil borings and corresponding costs for personnel, equipment, handling charges, and investigation. The Board found that the HPCAP's provision for 13 direct push soil borings was necessary to meet the minimum requirements of the Act and the Board's regulations. The Board therefore restored to the budget the costs associated with the additional borings. Ayers, PCB 03-214, slip. op. at 17-18.

The Board affirmed the Agency's modifications for shipping, analytical costs and miscellaneous retail purchases. Ayers, PCB 03-214, slip. op. at 18. The Board therefore affirmed the reductions from the budget for those items. Ayers, PCB 03-214, slip. op. at 18.

Motion, Response and Reply

On May 3, 2004, Ayers filed a request for authorization of payment of attorney fees (Mot.) with the Board. Ayers is seeking \$44,456.49 in total legal costs for this proceeding.

On May 19, 2004, the Agency filed a motion for extension of time to file a response and on May 21, 2004, a response (Resp.). The Board grants the motion for extension of time. On June 1, 2004, Ayers filed a motion for leave to file a reply *instanter* and a reply (Reply). That motion is also granted.

Surreply

On June 4, 2004, the Agency filed a motion for leave to file a surreply (M.Sur.). In the motion to file a surreply, the Agency asserts that the reply contains three contentions or misstatements that are material errors raised for the first time. M.Sur. at 1. The Agency cites to CDT Landfill Corporation v. City of Joliet, PCB 98-60 (Mar. 5, 1998) to support the request to file a surreply. M.Sur. at 2. On June 14, 2004, Ayers filed a response objecting to the filing of the surreply (O.Sur.). Ayers asserts that the Agency has mischaracterized and exaggerated allegations attributed to Ayers. O.Sur. at 2. Ayers also claims the Agency has engaged in reargument and failed to establish the existence of material errors and misstatements in the reply. *Id.*

The Board finds that the Agency's surreply specifically addresses alleged misstatements in Ayers brief and therefore is an appropriate filing pursuant to Board precedent (*see* CDT Landfill slip. op. at 3). Therefore, the Board grants the motion for leave to file a surreply.

Motion for Leave to Amend Response

On July 8, 2004, the Agency filed a motion for leave to file an amended response. The Agency asserts that testimony presented at hearing in the Board's rulemaking proceeding (Proposed Amendments to: Regulation of Petroleum Leaking Underground Storage Tanks (35 Ill. Adm. Code 732 and 734), R04-22, 23 (conslid.)) is relevant to the Board's decision on the request for legal costs filed by Illinois Ayers. On July 21, 2004, Illinois Ayers filed a response to the instant motion. Ayers challenges the lateness of the filing and argues that the information in the testimony is irrelevant.

The Agency is seeking to amend a response to a request for the authorization of payment of legal fees. The Act allows the Board to authorize the payment of legal fees if the owner or operator prevails before the Board. *See* 415 ILCS 5/57.8(1) (2002). There is no language in the Act which specifies who must initially pay the attorney fees. Therefore, the Board agrees with Ayers that the information presented in testimony at the rulemaking hearing is not relevant to the Board's decision on the request for legal costs. The Board denies the motion to amend the response.

STATUTORY BACKGROUND

Title XVI of the Act sets forth the provisions for the administration and oversight of the Leaking Underground Storage Tank Program (LUST), which includes the UST Fund. 415 ILCS 5/57 (2002). Title XVI also establishes requirements for eligible owners to seek reimbursement from the UST Fund. 415 ILCS 5/57 (2002). If an owner or operator plans to seek reimbursement, the owner or operator must comply with the provisions of Title XVI. 415 ILCS 5/57.5(a) (2002). Section 57.7 sets forth requirements for remediation of a site where a leaking

underground storage tank is removed, including the submission of a corrective action plan. 415 ILCS 5/57.7 (2002).

Section 57.8 of the Act sets forth when an owner or operator may seek reimbursement “after completion of the requirements of Sections 57.6 and 57.7, or after completion of any other required activities at the UST site.” 415 ILCS 57.8 (2002). Section 57.8 of the Act also includes the timeframes for Agency determinations and the right to appeal a decision to the Board. 415 ILCS 57.8(a)(1) (2002). Section 57.8 of the Act addresses indemnification and what steps an owner or operator may take if the UST Fund lacks sufficient funds to reimburse for the activities. 415 ILCS 57.8(a)(5) (2002).

Section 57.8(l) of the Act provides:

Corrective action does not include legal defense costs. Legal defense costs include legal costs for seeking payment under this Title unless the owner or operator prevails before the Board in which case the Board may authorize payment of legal fees. 415 ILCS 5/57.8(l) (2002).

ARGUMENTS

The Board will first summarize the arguments made by Ayers in the motion. Next, the Board delineates the Agency’s arguments. The Board will then set forth Ayers’ arguments in reply and the Agency’s surreply.

Motion

Ayers argues that under Section 57.8(l) of the Act (415 ILCS 5/57.8(l) (2002)), legal defense costs are reimbursable from the underground storage tank fund (UST Fund) if the owner or operator prevails before the Board. Mot. at 1. Ayers concedes that the awarding of attorney’s fees is discretionary with the Board. Mot. at 2. However, Ayers points out that under some discretionary fee statutes, the courts have held that the prevailing party should ordinarily receive attorney’s fees unless special circumstances render such an award unjust. Mot. at 2, citing Hensley v. Eckerhart, 461 U.S. 424, 429 (1983).

Ayers argues that statutes which allow for reimbursement of legal defense costs are intended to encourage litigation by providing the reimbursement. Mot. at 2. Further, Ayers asserts that the Board has recognized that the adjudication of contested cases is an essential element in the formation of the policies governing the UST Fund. Mot. at 3. Ayers also argues that fee awards protect the interests of third parties by encouraging an owner or operator to challenge the Agency’s decisions. Mot. at 3.

Ayers maintains that under Section 10-55(c) of the Administrative Procedure Act (APA) (5 ILCS 100/10-5 (2002)), a party which has an administrative rule invalidated by a court for any reason shall be entitled to reimbursement of legal defense costs. Mot. at 3. Ayers asserts that had a court made the same ruling as the Board, the court would have no discretion and would be required to award defense costs. *Id.* Ayers concedes that Section 10-55 of the APA does not

apply to a Board order; however, the existence of a statutory provision and the Board's ruling "should compel the Board to" grant the motion for costs of legal defense.

Response

The Agency argues that Section 57.8(1) of the Act (415 ILCS 5/57.8(1) (2002)) is not applicable to appeals of Agency's decisions to modify the HPCAP and budget. Resp. at 3. The Agency asserts that the plain language of Section 57.8(1) of the Act (415 ILCS 5/57.8(1) (2002)) clearly limits applicability to legal costs for successful actions seeking payment from the UST Fund. *Id.* The Agency maintains that an appeal of HPCAP and the resulting budget are not a request for payment from the UST Fund. *Id.*

The Agency theorizes that Ayers might argue that approval of the HPCAP and budget are precursors to reimbursement. Resp. at 3. However, the Agency asserts that if any condition precedent to an actual request for payment is considered to be tantamount to a request for payment, then the scope of Section 57.8(1) of the Act (415 ILCS 5/57.8(1) (2002)) will be extended beyond the plain language of the statute. Resp. at 4.

The Agency asserts that a technical plan is not akin to a request for payment because the technical plan does not include a request for payment. Resp. at 4. Furthermore, the Agency maintains that the Board's rules establish different procedures for technical plans versus payment or reimbursement requests. *Id.* The Agency argues that the Act and the Board's rules are straightforward and clearly set forth two different procedures. *Id.* Therefore, the Agency opines that there "is no doubt" that a request for payment from the UST Fund is not the same as a plan or report, including a budget. *Id.*

The Agency notes that the only other case that the Board has relied on Section 57.8(1) of the Act (415 ILCS 5/57.8(1) (2002)) was Ted Harrison Oil Company v. IEPA, PCB 99-127 (Oct. 16, 2003). Resp. at 5. The Agency points out the Board did award legal costs in that case. *Id.* The Agency agrees that the award of legal costs in that case was correct because Ted Harrison was the type of case specified in Section 57.8(1) of the Act (415 ILCS 5/57.8(1) (2002)). *Id.*

The Agency further argues that if the Board decided that legal defense cost reimbursement was appropriate under Section 57.8(1) of the Act (415 ILCS 5/57.8(1) (2002)), the Board should deny Ayer's motion for legal cost reimbursement in this case. Resp. at 5. The Agency argues that even if the budget could be likened to payment, the review of the HPCAP is not a request for reimbursement. *Id.* The Agency argues that many of the costs in this proceeding stem from the technical decision on the HPCAP concerning the number of borings. Resp. at 6. The Agency argues that the decision on the HPCAP is clearly technical and reimbursement for legal defense costs are not subject to reimbursement. *Id.* Thus, the Agency maintains that at the very least the legal costs should be reduced by three-quarters. Resp. at 6-7.

The Agency disagrees with Ayers that payment of legal costs somehow benefits third parties. Resp. at 7. The Agency argues that litigation of matters may be the only means available for dispute resolution between parties; however, litigation should not be encouraged.

Resp. at 7. The Agency points out that resolution through negotiation is the preferred route. Resp. at 7.

The Agency also gives little credence to Ayers' argument that the APA is persuasive. Resp. at 7-8. The Agency asserts that the obvious flaw in the argument is that the Board's authority is not the same as the court's authority under the APA. Resp. at 8. The Agency argues that just because a different statute allows recovery of legal costs under different circumstances by a different judicial authority does not mean the Board can use that authority to grant legal costs. Resp. at 8.

Reply

Ayers asserts in the reply that "discretionary fee-shifting provisions" raise three questions. Reply at 1. First, does the provision apply? *Id.* Second, how should the discretion be exercised? *Id.* And third, are the fees reasonable? Reply at 1-2. Ayers points out that the Agency's response primarily addresses the first of these questions and therefore Ayers' reply will primarily address that issue. Ayers further notes that the Agency did not challenge the reasonableness of the fees, so that issue is waived. Reply at 2. The following sections will summarize Ayers' reply to the Agency's argument.

Applicability of Section 57.8(l) of the Act (415 ILCS 5/57.8(l) (2002)

Ayers asserts that the fundamental flaw in the Agency's argument is that the Agency assumes different terms may be used interchangeably. Reply at 3. Ayers claims that the Agency fails to explain why the legislature adopted different terminology. *Id.* Ayers argues that the plain language of Section 57.8(l) of the Act (415 ILCS 5/57.8(l) (2002) accomplishes two purposes. Reply at 2. First, Ayers claims the language allows the Board to award legal fees to the prevailing owner or operator and, second, it prohibits the Agency from approving legal defense costs as corrective action costs. *Id.* Ayers points out that the "legal defense costs" language governs the Agency review and approval of plans and budgets. Reply at 2, citing City of Roodhouse v. IEPA, PCB 92-31 (Sept. 17, 1992). In contrast, Ayers points out that the Board's awarding of legal fees arises when an owner or operator prevails. Reply at 2-3, citing Ted Harrison.

Ayers also claims that Section 57.8(l) of the Act (415 ILCS 5/57.8(l) (2002) clearly allows the Board to grant payment of legal fees when an owner or operator prevails. Reply at 4. Ayers asserts that the Agency "erroneously argues" that the Board's authority is limited by whether or not the underlying claim was for reimbursement from the UST Fund. *Id.* Ayers argues that the exclusion for "legal defense costs" in Section 57.8(l) of the Act (415 ILCS 5/57.8(l) (2002) applies to legal defense costs as corrective action and reiterates that under Roodhouse some, but not all, legal defense costs are reimbursable. Reply at 5. Ayers also points to Clarendon Hills Bridal Center v. IEPA, PCB 93-55 (Feb. 16, 1995) as support for the argument and notes that in Clarendon Hills, the Board affirmed the Agency's denial of legal costs incurred when challenging an underground storage tank registration. Reply at 6. Based on these prior Board cases, Ayers asserts that if the Agency's narrow interpretation of "legal costs for seeking payment" is accepted a wide variety of claims would no longer be excluded as "legal

defense costs” under the language of Section 57.8(l) of the Act (415 ILCS 5/57.8(l) (2002)). Reply at 6.

Ayers further relies on the 1993 amendments to the Act to support a broad interpretation of the language in Section 57.8(l) of the Act (415 ILCS 5/57.8(l) (2002)). Reply at 7. Ayers notes that in 1993 the language “under Section 22.18b” was replaced with the language “under this Title”. *Id.* Ayers argues that had the legislature intended a narrow interpretation of the phrase “legal costs of seeking payment” the amendment would have referenced only Section 57.8 of the Act (415 ILCS 5/57.8 (2002)) and not the entire Title. Reply at 7. Ayers maintains that under the terms of Section 57.8(l) of the Act (415 ILCS 5/57.8(l) (2002)) the legal costs of seeking payment arise under the entire Title not merely a single section in which payment is actually requested. Reply at 7.

Ayers also takes issue with the Agency’s argument that the underlying case involved a technical issue and not a reimbursement issue. Reply at 9. Ayers asserts that even though the number of borings is a technical issue, the issue can only arise when the owner is seeking reimbursement. Reply at 9. Thus Ayers argues all issues in the underlying appeal arose because Ayers was seeking reimbursement. *Id.*

Exercising Discretion

Ayers asserts that the Agency has mischaracterized the argument by Ayers concerning the policy reasons for fee-shifting statutes. Reply at 10. Ayers argues that courts have acknowledged that fee-shifting statutes encourage some types of litigation. Reply at 10, citing Chicago v. Illinois Commerce Commission, 187 Ill. App. 3d 468, 470 (1st Dist. 1989). Ayers maintains that although the Agency may not agree with the courts, the Agency agreement or disagreement is irrelevant when analyzing the legislature’s intent. Reply at 10.

Surreply

The Agency maintains that the reply by Ayers contains three specific contentions or misstatements that are “material errors” raised for the first time. First, the Agency takes issue with Ayers’ allegation that the Agency misinterpreted or misapplied Section 57.8(l) of the Act (415 ILCS 5/57.8(l) (2002)). Surreply at 1-2. The Agency argues that the Agency’s response conforms to Ayers’ motion and is consistent with the statutory language. Surreply at 2.

Second, the Agency disagrees with Ayers’ characterization that the Ted Harrison case is inapplicable. Surreply at 1-2. The Agency notes that Ted Harrison is the only case in which the Board has awarded attorney’s fees under Section 57.8(l) of the Act (415 ILCS 5/57.8(l) (2002)). Surreply at 2-3. The Agency argues that the case is therefore relevant. Surreply at 3.

Third, the Agency disagrees that technical issues can only arise when seeking reimbursement. Surreply at 3. The Agency asserts that technical requirements of the Act and Board regulations require submission of a HPCAP, but a budget need not be submitted in tandem. Surreply at 4. The Agency concedes that a budget must be submitted only if the owner

or operator seeks reimbursement. However, the Act and Board regulations allow review of a HPCAP even if there is no intent to seek reimbursement. *Id.*

DISCUSSION

The Board will first frame the issue before the Board. Next the Board will examine the statutory provision at issue. Finally, the Board will delineate the reasons for exercising the discretion to award legal defense costs.

Issue

The issue before the Board is whether or not Ayers should be awarded legal costs accrued in appealing the Agency's modification of the HPCAP and budget for Ayers' site in Beardstown, Cass County. The pertinent statute governing this determination is Section 57.8(l) of the Act, which provides:

Corrective action does not include legal defense costs. Legal defense costs include legal costs for seeking payment under this Title unless the owner or operator prevails before the Board in which case the Board may authorize payment of legal fees. 415 ILCS 5/57.8(l) (2002).

Section 57.8(l) of the Act (415 ILCS 5/57.8(l) (2002)) provides for an award to compensate counsel for prevailing before the Board and as such is a "fee-shifting" statute. *See Brundidge et al. v. Glendale Federal Bank, F.S.B.* 168 Ill. 2d 235, 245; 659 N.E.2d 909, 914 (1995). The plain language of Section 57.8(l) of the Act (415 ILCS 5/57.8(l) (2002)) guides the Board in our analysis of when to allow the prevailing party to receive legal defense costs. The first question the Board must address is whether or not the proceeding falls within the parameters of the statutory provision. Second, the Board must also determine whether or not to exercise our discretion.

Section 57.8(l) of the Act (415 ILCS 5/57.8(l) (2002))

Section 57.8 (1) is part of Title XVI, which is known as the Leaking Underground Storage Tank Program. The purpose of Title XVI includes administering and overseeing the UST Fund, as well as establishing requirements for eligible owners to seek reimbursement from the UST Fund. 415 ILCS 5/57 (2002). If an owner or operator plans to seek reimbursement, the owner or operator must comply with the provisions of Title XVI. 415 ILCS 5/57.5(a) (2002). Section 57.7 sets forth requirements for remediation of a site where a leaking underground storage tank is removed, including the submission of a corrective action plan. 415 ILCS 5/57.7 (2002).

Section 57.8 (1) of the Act (415 ILCS 5/57.8 (1) clearly states that the Board "may authorize payment of legal fees" if the owner or operator prevails before the Board in seeking payment under Title XVI. The Agency argues that the submission of a HPCAP and budget is not "seeking payment" and thus the reimbursement of legal fees is not appropriate. The Agency further expresses concern that "if any condition precedent to an actual payment request" is

considered equivalent to the request itself, the Board will be expanding the scope of Section 57.8(1) of the Act (415 ILCS 5/57.8(1) (2002)). The Board disagrees.

Title XVI includes numerous steps which must be followed in order for an owner or operator to seek and receive reimbursement for leaking UST corrective citation. The only way an owner or operator can seek reimbursement for remediation of a leaking underground storage tank site is by following the provisions of Title XVI. The Agency can approve or disapprove the owner or operator's actions at several points in the remediation of the site. If an appeal to the Board is not filed at any specific step, the owner or operator has acquiesced to the Agency's decision and no appeal can be taken later. See E & L Trucking Company v. IEPA, PCB 02-101 (Mar. 7, 2002), citing Reichold Chemicals, Inc. v. PCB, 204 Ill. App. 3d 674, 561 N.E.2d 1343 (3rd Dist. 1990).

In this instance, Ayers had submitted a HPCAP and budget pursuant to Section 57.7 of the Act (415 ILCS 5/57.7 (2002)). The Agency's determination that 10 of the 13 borings were unnecessary was a final decision. After the Agency's denial, Ayers could: (1) appeal the reduction by the Agency; (2) decide that the originally submitted HPCAP was more extensive than necessary to meet the minimum requirements of the Act and Board regulations; or (3) perform the work and not be eligible for reimbursement. Had Ayers not appealed the decision, Ayers would have been unable to seek reimbursement for the additional 10 borings. See E & L Trucking Company v. IEPA, PCB 02-101 (Mar. 7, 2002), citing Reichold Chemicals, Inc. v. PCB, 204 Ill. App. 3d 674, 561 N.E.2d 1343 (3rd Dist. 1990). Thus, the only way for Ayers to seek and receive reimbursement for the planned HPCAP was to file this appeal.

Ayers did prevail before the Board in significant part. Ayers did appeal a decision of the Agency under the provisions of Title XVI. In this instance, the provisions of Title XVI are necessary steps an owner or operator must first follow in order to later seek reimbursement from the UST Fund. The Board finds that Ayers was seeking payment under Title XVI and the plain language of Section 57.8(1) of the Act (415 ILCS 5/57.8(1) (2002)) allows for the awarding of legal fees. Therefore, the Board finds that this proceeding falls within the parameters of Section 57.8(1) of the Act (415 ILCS 5/57.8(1) (2002)).

Board Discretion

Under a fee-shifting statute, the amount of fees to be awarded lies within the "broad discretionary powers" of the Board. Globalcom, Inc. v. Illinois Commerce Commission, 347 Ill. App. 3d 592; 806 N.E.2d 1194, 1214 (1st Dist. 2004). This includes a determination of reasonableness of the requested fees. United States Fidelity and Guaranty Company v. Old Orchard Plaza Limited Partnership, 333 Ill. App. 3d 727, 740; 776 N.E.2d 812, 824 (1st Dist. 2002); In re Pine Top Insurance Company, 292 Ill. App. 3d 596; 686 N.E.2d 657 (1997). Based on the facts of this case the Board finds that legal fees should be awarded and the costs are reasonable.

First, the Board notes that the underlying appeal in this matter involved not only the budget for HPCAP but also the number of borings necessary to classify the soils at the site. Ayers, PCB 03-214, slip. op. at 16. Thus, Ayers prevailed on a technical issue involving the

ultimate clean up of the site. The Board finds this persuasive in determining whether or not to allow for reimbursement of legal fees.

Second, the Board found that the rate sheet used by the Agency was a rule and that the Board was not bound by the rule. *Ayers*, PCB 03-214, slip. op. at 16. Under the APA (5 ILCS 100/1 *et seq.* (2002)) if a court declares a rule invalid, the petitioner can be awarded attorney's fees. *See* 5 ILCS 100/10-55 (2002)). The Board finds this a compelling reason for allowing reimbursement of legal fees.

Finally, the motion filed by Ayers includes an affidavit and an exhibit to the affidavit specifying the legal services provided. Mot. at Attach A. Ayers noted that the burden shifts to the Agency to rebut the reasonableness of the fees. Mot. at 4. The Agency did not challenge the reasonableness of the costs. Rather the Agency argues for a reduction of the legal costs based on the Agency's argument that the technical issues should be separated from the budget. As indicated above, the Board finds that this proceeding does fall under the parameters of Section 57.8(l) of the Act (415 ILCS 5/57.8(l) (2002)) and the Agency's distinction is unwarranted. Therefore, the Board does not find the legal fees are unreasonable.

For the reasons discussed above, the Board finds that under the facts of this case awarding legal fees is appropriate. Therefore, the Board will direct the Agency to reimburse Ayers \$44,456.49 in legal fees.

CONCLUSION

The Board grants the motions to file a reply and surreply; however, the Board denies the motion to file an amended response. Further, the Board finds that the reimbursement of legal fees is warranted based on the facts of this case. Therefore, the motion is granted and the Board directs that \$44,456.49 in legal fees be reimbursed. The Board will set forth the entire modified order below.

ORDER

1. The Board hereby orders the Illinois Environmental Protection Agency to restore the following modifications of Illinois Ayers Oil, Inc.'s high priority corrective action plan (HPCAP) and budget by approving the HPCAP's use of 13 direct push soil borings to determine the extent of the contamination plume and by restoring all corresponding budget reductions:

\$8,910.72 and \$108.00 for Investigation costs
 \$18,450.00 for Personnel Costs
 \$849.30 for Equipment Costs
 \$36.00 for Camera
 \$270.00 for Peristaltic Pump
 \$979.17 for Handling Charges.

2. The Board hereby affirms the following Illinois Environmental Protection Agency budget reductions in the Illinois Environmental Protection Agency's March 28, 2003 letter:

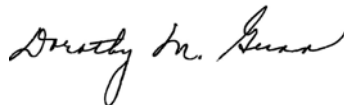
\$490.00 for Analysis Costs
\$150.00 for USP [sic] sample shipping
\$50.00 for Miscellaneous Retail Purchases

3. The Board directs the Agency to provide reimbursement to Illinois Ayers Oil, Inc. for legal fees in the amount of \$44,456.49.

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 5/31(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 August 5, 2004, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board