

ILLINOIS POLLUTION CONTROL BOARD
July 26, 2007

VILLAGE OF WILMETTE,)
)
 Petitioner,)
)
 v.) PCB 07-48
) (UST Appeal)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

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

In this appeal, the Village of Wilmette (Village) challenges a decision by the Illinois Environmental Protection Agency (Agency) concerning the Village's former underground storage tank (UST) site located at 710 Ridge Road in Wilmette, Cook County. For the reasons below, the Board grants the Agency's motion for summary judgment and denies the Village's motion for summary judgment.

On December 14, 2006, the Village timely filed a petition asking the Board to review a November 13, 2006 determination of the Agency. *See* 415 ILCS 5/40(a)(1) (2006); 35 Ill. Adm. Code 101.300(b), 105.402. The Agency rejected the Village's reimbursement application, stating that the billings submitted exceeded the approved budget amounts. The Village alleged that its reimbursement request "was less than the [Agency] approved budget amount." Petition at 1. The Board accepted the petition for hearing on December 21, 2006.

On January 18, 2007, the Village filed a motion to consolidate this docket, PCB 07-48 with Village of Wilmette v. IEPA, PCB 07-27. The Board denied the motion on March 15, 2007, stating that consolidation of the cases was "not in the interest of convenient, expeditious, and complete determination of the claims." Village of Wilmette v. IEPA, PCB 07-48, slip op. at 1 (Mar. 15, 2007). The Board made this finding because a motion for summary judgment was pending in PCB 07-27, but no corresponding motion had been filed in this docket. *Id.*

On March 22, 2007, the Agency filed the administrative record. On March 29, 2007, the Agency filed a motion for summary judgment. On April 23, 2007, the Village filed a response to Agency's motion for summary judgment and cross-motion for summary judgment (Resp.). On May 10, 2007, the Agency filed a motion for leave to reply and a response to the cross motion. The Board grants the motion for leave to file a reply.

The Village stated in the response that a decision in PCB 07-27 concerning the Agency's denial of the budget amendment would be dispositive of the issue raised in this appeal. Resp. at 2. On July 12, 2007, the Board granted summary judgment to the Agency and denied summary judgment to the Village in PCB 07-27. Village of Wilmette v. IEPA, PCB 07-27, slip op. at 11

(July 12, 2007). Specifically, the Board found that the Agency properly rejected a proposed budget amendment because a no further remediation letter had been issued. The Board has reviewed the filings and record in this proceeding and agrees with the Village that the Board's finding in PCB 07-27 is dispositive of all issues in this proceeding. Therefore, based on the facts in this record and the Board's findings in PCB 07-27, the Board grants summary judgment to the Agency and denies summary judgment to the Village. Thus, the Agency's decision denying the Village's final request for reimbursement is affirmed.

This opinion constitutes the Board's findings of fact and conclusions of law.

IT IS SO ORDERED.

Board Member Thomas E. Johnson concurs.

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) (2006); *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, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on July 26, 2007, by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board