

ILLINOIS POLLUTION CONTROL BOARD
April 17, 2008

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 96-98
) (Enforcement – Water)
SKOKIE VALLEY ASPHALT CO., INC.,)
EDWIN L. FREDERICK, JR., individually)
and as owner and president of SKOKIE)
VALLEY ASPHALT CO., INC., and)
RICHARD J. FREDERICK, individually and)
as owner and vice president of SKOKIE)
VALLEY ASPHALT CO., INC.,)
)
Respondents.)

ORDER OF THE BOARD (by T.E. Johnson):

This is an enforcement action brought by the Office of the Attorney General, on behalf of the People of the State of Illinois (People), against Skokie Valley Asphalt Co., Inc., Edwin L. Frederick, Jr., and Richard J. Frederick (respondents). Today the Board rules on respondents' motion to reconsider and motion for stay.

The case concerns a site in Grayslake, Lake County. In its September 2, 2004 decision, the Board determined that respondents violated the Environmental Protection Act (Act) (415 ILCS 5 (2006)) and Board regulations regarding water pollution and the National Pollutant Discharge Elimination System (NPDES). Further, the Board held that respondents committed willful, knowing, or repeated violations and that they must pay a civil penalty of \$153,000. On November 1, 2007, the Board issued its final decision, awarding the People \$30,225 in attorney fees and \$2,291.20 in costs, as well as restating the findings of violation and setting forth respondents' payment obligations for the civil penalty, attorney fees, and costs.

On December 5, 2007, respondents timely filed a "Motion for Reconsideration," which includes a "Motion to Stay Date of Final Order." Respondents move the Board to reconsider its rulings regarding laches, equitable estoppel, and civil penalty. Additionally, respondents ask the Board to reconsider its finding that no prejudice or bias resulted from the prior Board employment of an attorney who appeared in this case as an Assistant Attorney General before being disqualified. Respondents also move the Board to "stay the date of the final decision until this Motion for reconsideration has been fully considered." Motions at 40. With the hearing officer's leave, the People filed a response opposing respondents' motions on December 31, 2007.

A motion to reconsider may be brought “to bring to the [Board’s] attention newly discovered evidence which was not available at the time of the hearing, changes in the law or errors in the [Board’s] previous application of existing law.” Citizens Against Regional Landfill v. County Board of Whiteside County, PCB 92-156, slip op. at 2 (Mar. 11, 1993), citing Korogluyan v. Chicago Title & Trust Co., 213 Ill. App. 3d 622, 627, 572 N.E.2d 1154, 1158 (1st Dist. 1991); *see also* 35 Ill. Adm. Code 101.902. In addition, a motion to reconsider may specify “facts in the record which were overlooked.” Wei Enterprises v. IEPA, PCB 04-23, slip op. at 3 (Feb. 19, 2004).

The Board has reviewed respondents’ motions and the People’s response. Most if not all of respondents’ motion to reconsider is devoted to repeating arguments already considered and rejected by the Board. Applying the standards articulated above, the Board denies the motion to reconsider. Even if the exhibit attached to the motion were to be characterized as “newly discovered evidence,” which the People dispute, it is not “of such conclusive or decisive character as to make it probable that a different judgment would be reached” and therefore does not warrant reconsideration. Patrick Media Group, Inc. v. City of Chicago, 255 Ill. App. 3d 1, 8, 626 N.E.2d 1066, 1071-72 (1st Dist. 1993).

Further, the Board denies as unnecessary respondents’ motion for stay. Under the Board’s procedural rules, a “timely-filed motion for reconsideration . . . stays the effect of the final order until final disposition of the motion.” 35 Ill. Adm. Code 101.520(c). Accordingly, by rule, the Board’s November 1, 2007 order was stayed with the timely filing of respondents’ motion to reconsider. By that same rule, today’s denial of the motion to reconsider lifts the stay.

The order below contains the Board’s findings of violation and respondents’ payment duties regarding the civil penalty and the People’s attorney fees and costs.

ORDER

1. The Board finds that respondents violated Sections 12(a) and (f) of the Act (415 ILCS 5/12(a), (f) (2006)) and 35 Ill. Adm. Code 302.203, 304.105, 304.106, 305.102(b), 309.102(a), and 309.104(a).
2. No later than June 2, 2008, which is the first business day following the 45th day after the date of this order, respondents must pay \$153,000 in civil penalties and \$32,516.20 in attorney fees and costs of the People. Respondents must pay the civil penalty by certified check or money order, payable to the Environmental Protection Trust Fund. Respondents must pay the attorney fees and costs by certified check or money order, payable to the Hazardous Waste Fund. The case number and case name must be included on each certified check or money order.
3. Respondents must send each certified check or money order to:

Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East

P.O. Box 19276
Springfield, Illinois 62794-9276

4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Act (415 ILCS 5/42(g) (2006)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2006)).

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) (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 Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 17, 2008, by a vote of 4-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board