

ILLINOIS POLLUTION CONTROL BOARD
October 16, 2008

UNITED CITY OF YORKVILLE, a municipal)
corporation,)
)
Petitioner,)
)
v.) PCB 08-95
) (Third-Party Appeal - Land)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY and HAMMAN)
FARMS,)
)
Respondents.)

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

On June 4, 2008, United City of Yorkville (Yorkville) filed a third-party petition asking the Board to review a May 1, 2008 determination of the Illinois Environmental Protection Agency (Agency). In the determination, the Agency, in response to the request of Hamman Farms (Hamman), allows Hamman to apply landscape waste to its fields in Kendall County at a rate greater than otherwise permissible under the Environmental Protection Act (415 ILCS 5 (2006)). On August 7, 2008, the Board granted the Agency's and Hamman's motions to dismiss the appeal based on the Board's lack of jurisdiction.

On September 5, 2008, Hamman filed a motion for attorney fees and costs. Hamman seeks an award of \$20,325 in attorney fees and \$265.81 in related expenses incurred in litigating the appeal. Motion at 3. Hamman argues that Yorkville "knew or should have known" that it could not prevail before the Board but instead "purposely filed its frivolous action with the intent to harass and annoy Respondent Hamman Farms." *Id.* Hamman asserts that the Board may order Yorkville to pay the requested \$20,590.81 as a sanction under Supreme Court Rule 137 for litigation "interposed for improper purposes." *Id.*

On September 19, 2008, Yorkville filed a response opposing Hamman's motion. Yorkville argues that Supreme Court Rule 137 does not apply and that Yorkville brought the appeal in good faith. Response at 3-8. Additionally, according to Yorkville, Hamman's request lacks the specificity required of a motion for sanctions. *Id.* at 8-9.

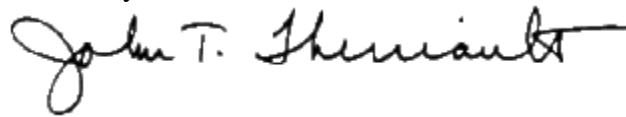
The Board agrees with Yorkville that Supreme Court Rule 137 does not apply to Board proceedings. The Board's procedural rules state that "the Supreme Court Rules [Ill. S. Ct. Rules] do not expressly apply to proceedings before the Board." 35 Ill. Adm. Code 101.100(b). The Board may look to the Illinois Supreme Court Rules "for guidance where the Board's procedural rules are silent." *Id.* The Board's procedural rules, however, are not silent on sanctions. Sections 101.800 and 101.802 of those rules address sanctions and do not provide for attorney fees or costs. *See* 35 Ill. Adm. Code 101.800, 101.802.

The appellate court has held that absent explicit statutory authority to award “attorney fees,” the Board cannot do so. ESG Watts, Inc. v. PCB, 286 Ill. App. 3d 325, 337-39, 676 N.E.2d 299, 307-09 (3rd Dist. 1997) (holding Board lacked authority to order payment of attorney fees as a sanction in a permit appeal), *appeal denied*, 173 Ill. 2d 524, 684 N.E.2d 1335 (1997). Without a statute specifically authorizing them, “attorney fees and other ordinary expenses of litigation may not be awarded.” ESG Watts, 286 Ill. App. 3d at 337, 676 N.E.2d at 307. The Board lacks statutory authority to make the award requested by Hamman and therefore denies Hamman’s motion for attorney fees and costs. This docket is closed.

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 October 16, 2008, by a vote of 4-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board