

ILLINOIS POLLUTION CONTROL BOARD  
October 17, 1996

KATHE'S AUTO SERVICE CENTER, )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 96-102  
 ) (UST - Reimbursement)  
 )  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 )  
 Respondent. )

ORDER OF THE BOARD (by J. Yi):

On November 9, 1995, Kathe's Auto Service Center (petitioner) filed a petition appealing the Illinois Environmental Protection Agency's (Agency) final reimbursement decision concerning petitioner's leaking underground storage tanks pursuant to Sections 57.8(i) and 40(a) of the Environmental Protection Act (Act). The Board on August 1, 1996 issued an opinion and order affirming the Agency's final reimbursement decision.

On September 3, 1996, petitioner filed a motion for reconsideration in order to exhaust its administrative remedies in order to pursue its appeal of this matter with the Illinois Court of Appeals. (Mot. at 1.)<sup>1</sup> On September 23, 1996 the Agency filed a response to the motion for reconsideration requesting the Board to deny such request. (Resp. at 1.)<sup>2</sup>

In ruling upon a motion for reconsideration the Board is to consider, but is not limited to, error in the previous decision and facts in the record which may have been overlooked. (35 Ill. Adm. Code 101.246(d).) In *Citizens Against Regional Landfill v. The County Board of Whiteside County*, (March 11, 1993), PCB 93-156, we have stated that "[t]he intended purpose of a motion for reconsideration is to bring to the court's attention newly-discovered evidence which was not available at the time of the hearing, changes in the law, or errors in the court's previous application of the existing law." (*Korogluyan v. Chicago Title & Trust Co.*, (1st Dist. 1992), 213 Ill. App.3d 622, 572 N.E.2d 1154.)

Petitioner in the motion for reconsideration reiterates the same arguments in its cross-motion for summary judgment. (Mot. at 2-3.) Petitioner concludes that the Board is creating "a situation in which reimbursement of the most basic required remediation activities will not be allowed simply because of the sequence in which they are performed" (Mot. at 2) and requests the Board to reconsider the arguments contained in both the motion for reconsideration and its cross-motion for summary judgment (Mot. at 3).

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<sup>1</sup> The motion for reconsideration will be referenced to as "Mot. at ".

<sup>2</sup> The Agency's response will be referred to as "Resp. at ".

The Agency in its response restates the Board's findings and states that both the Act and the Board have answered the questions posed by petitioner. (Resp. at 2-4.) Therefore the Agency requests the Board to deny petitioner's motion.

The Board finds that petitioner's motion for reconsideration does not present the Board with new evidence, a change in the law, or any other reason to conclude that the Board's decision was in error. Therefore, petitioner's motion for reconsideration is denied.

IT IS SO ORDERED

Board Member K. Hennessey abstained.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the \_\_\_\_\_ day of \_\_\_\_\_, 1996, by a vote of \_\_\_\_\_.

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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board