

ILLINOIS POLLUTION CONTROL BOARD
May 4, 1995

CLARENDON HILLS BRIDAL)	
CENTER (LEARSI AND COMPANY,)	
INC.),)	
)	
Petitioner,)	
)	
v.)	PCB 93-55
)	(UST Reimbursement)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by M. McFawn):

This matter is before the Board on a motion for reconsideration filed by petitioner Clarendon Hills Bridal Center on March 23, 1995, seeking reconsideration of the Board's February 16, 1995 opinion and order in this case. That order affirmed in part and reversed in part the Agency's denial of reimbursement from the Illinois Leaking Underground Storage Tank Fund of certain costs in connection with petitioner's removal of underground storage tanks. Petitioner filed a brief in support of its motion for reconsideration on April 6, 1995. The Illinois Environmental Protection Agency (Agency) filed a response to petitioner's brief in support of its motion for reconsideration on April 24, 1995. The Agency had also filed an April 7, 1995 response to petitioner's March 23, 1995 "Motion to Extend Time in Which to File a Brief in Support of its Motion for Reconsideration," which was mooted by the Board's April 7, 1995 order granting petitioner the requested extension.

In support of its motion for reconsideration, petitioner alleges that certain legal and factual errors in the Board's February 16, 1995 opinion and order require reconsideration of that decision. Petitioner's arguments include the following: (1) that the Board failed to consider evidence of a competitive bid process; (2) that the Board improperly failed to consider evidence not submitted prior to hearing; (3) that the Board improperly affirmed the Agency's denial of costs associated with soil contamination investigation; (4) that the Board improperly affirmed the Agency's denial of costs associated with pumping and treating water; and (5) that the Board improperly affirmed the Agency's denial of costs for parking lot lighting.

In ruling on a motion for reconsideration the Board is to consider, but is not limited to, error in the decision and facts in the record which may have been overlooked. (35 Ill. Adm. Code 101.246(d).) In Citizens Against Regional Landfill v. County of Board of Whiteside (March 11, 1993), PCB 93-156, we 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 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, 1158.)"

We grant the motion for reconsideration for the limited purpose of correcting a factual error in the Board's decision, as pointed out by petitioner. The Board incorrectly stated at page 5 of its February 16, 1995 opinion and order that the hearing officer denied the admission of Exhibit 6, a hand-written note offered as evidence of a competitive bid. While the hearing officer did initially deny admission of this exhibit on the grounds that it constituted hearsay (Tr. at 194-196), as petitioner properly points out, the exhibit was later admitted into evidence by the hearing officer after the Agency withdrew its objection to its admission (Tr. at 832).

Concerning this evidence, however, at page 5 of its February 16, 1995 opinion, the Board stated:

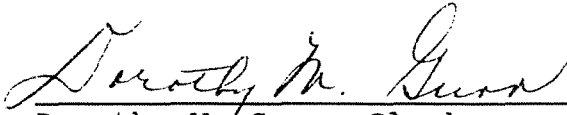
Furthermore, even if the evidence concerning the \$90 per cubic yard rate is considered, despite its inadmissibility as hearsay, that information is simply insufficient to demonstrate that it constituted a competitive bid.

We therefore find that adequate consideration was given to Exhibit 6, and that correction of this error does not affect the Board's determination that there was insufficient evidence of a competitive bidding process.

We find that the other arguments raised by petitioner present the Board with no new evidence, a change in the law, or any other reason to conclude that the Board's February 16, 1995 decision was in error. Petitioner's additional arguments in its motion for reconsideration and supporting brief merely reassert arguments previously asserted by petitioner and considered by the Board in its February 16, 1995 opinion and order. We therefore affirm our holding in that order, affirming in part and reversing in part the Agency's denial of reimbursement from the Illinois Leaking Underground Storage Tank Fund of certain costs in connection with petitioner's removal of underground storage tanks.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 4th day of May 1995, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board