

ILLINOIS POLLUTION CONTROL BOARD
November 5, 2015

CHATHAM BP, LLC,)	
)	
Petitioner,)	
)	
v.)	PCB 15-173
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by J.D. O’Leary):

On March 30, 2015, Chatham BP, LLC (Chatham BP) appealed a February 25, 2015 determination by the Illinois Environmental Protection Agency (Agency or Illinois EPA) concerning Chatham BP’s underground storage tank site located at 300 North Main Street, Chatham, Sangamon County. The Agency’s determination rejected a Stage 2 site investigation plan. Without a plan it had approved, the Agency stated that it could not make a determination on the proposed budget. On July 23, 2015, the Board reversed the Agency’s rejection of the plan and stated that at the conclusion of the case it would remand the budget to the Agency for its review. On September 3, 2015, the Board granted Chatham BP’s motion for authorization of legal fees and directed the Agency to reimburse Chatham BP \$11,485.08 in legal fees and costs.

On October 13, 2015, the Agency filed a motion to reconsider (Mot.) the September 3, 2015 order. The motion requests that the Board on reconsideration dismiss this action as moot and deny Chatham BP its legal fees and costs. Mot. at 7. On October 28, 2015, Chatham BP filed its response (Resp), which requested reimbursement of additional legal fees. For the reasons below, the Board denies the motion to reconsider and declines to award additional legal fees to Chatham BP.

SUMMARY OF AGENCY’S MOTION

The Agency argues that “Chatham BP’s claim concerning its Stage 2 Site Investigation Plan and budget was mooted when Illinois EPA approved them in its March 27, 2015 letter.” Mot. at 3. The Agency requests that the Board “reconsider its July 23, 2015 decision incorporated in its September 3, 2015 decision, as the Board erred in its application of existing law.” *Id.* at 4.

The Agency states that the Board can authorize the payment of legal fees if an owner or operator prevails before the Board. Mot. at 6; *see* 415 ILCS 5/57.8(1) (2014). The Agency argues that if, “by filing its Petition for Review and litigating this action, Chatham BP had obtained the approval of its Stage 2 Site Investigation Plan and corresponding budget, then Chatham BP would have prevailed before the Board and would be eligible for payment of its

legal fees.” Mot. at 6. The Agency further argues that “no argument can be made in the case at bar that it was reasonably necessary for Chatham BP to file and litigate this action to obtain that approval, as Illinois EPA had approved the Stage 2 Site Investigation Plan and corresponding budget before this action was ever filed.” *Id.* The Agency asserts that its “March 27, 2015 letter provided Chatham BP with the relief it sought on its Stage 2 Site Investigation Plan and corresponding budget,” causing this action to become moot. *Id.* The Agency concludes that, because there was no reasonable connection between this litigation and the fees and costs requested by Chatham BP, the Board erred in awarding them. *Id.*

In support of its motion for reconsideration, the Agency cites the arguments in its June 25, 2015 post-hearing brief and its August 18, 2015 objection to Chatham BP’s motion for fees. Mot. at 7. The Agency requests that the Board reconsider its September 3, 2015 opinion and order, dismiss this action as moot, and deny Chatham BP’s attorney fees and costs. *Id.*

SUMMARY OF CHATHAM BP’S RESPONSE

Chatham BP states that the Agency’s motion fails to provide a basis for reconsideration. Resp. at 2. Chatham BP asserts that the Agency renews its argument on mootness, which the Board has twice rejected. *Id.*

Chatham BP states that it “has incurred additional legal fees in researching and preparing” its response. Mot. at 3. Chatham BP argues that, “[s]ince the IEPA’s motion forced the Petitioner to incur these fees,” the Board should follow its September 3, 2015 order and award these additional fees. *Id.* Chatham BP attached a summary of its fees (Exh. 1) in a total amount of \$2,190. Exh. 1 at 1.

BOARD DISCUSSION

A motion to reconsider may be filed in order “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 Reg’l Landfill v. County Bd. 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* 35 Ill. Adm. Code 101.902. A motion to reconsider may also specify “facts in the record which were overlooked.” Wei Enters. v. IEPA, PCB 04-23, slip op. at 3 (Feb. 19, 2004).

The Agency renews its argument that a March 27, 2015 letter rendered this action moot. Mot. at 3-4, 6. In its July 23, 2015 interim opinion and order, the Board concluded “that the Agency’s argument provides no basis to dismiss this case on the basis of mootness.” Chatham BP v. IEPA, PCB 15-173, slip op. at 18 (July 23, 2015). The Board finds that this renewed argument provides no basis to conclude that the Board erred in its application of the law.

The Agency also renews its argument that there was no reasonable connection between the litigation and Chatham BP’s requested fees. Mot. at 6. In its September 3, 2015 order awarding fees to Chatham BP, the Board was not persuaded that the Agency’s argument justified denying the motion for authorization of payment of legal fees and costs. Chatham BP v. IEPA,

PCB 15-173, slip op. at 7 (Sept. 3, 2015). The Board finds that this renewed argument provides no basis to conclude that the Board erred in its application of the law.

For the reasons above, the Board denies the Agency's motion to reconsider and declines to either dismiss this action as moot or to deny Chatham BP the fees and costs awarded in the Board's September 3, 2015 opinion and order as requested by the Agency.

The Board's procedural rules do not require a response to a motion, and the Board is not persuaded that the Agency "forced" Chatham BP to incur additional fees in this case. Resp. at 3. The Board declines to exercise its discretion to award fees requested in Chatham BP's October 28, 2015 response.

CONCLUSION

For the reasons above, the Board denies the Agency's motion for reconsideration. The Board declines to exercise its discretion to award legal fees requested by Chatham BP in its October 28, 2015 response. Having concluded its consideration of the issues presented in this appeal, and pursuant to its interim opinion and order of July 23, 2015, and its opinion and order of September 3, 2015, the Board remands Chatham BP's proposed Stage 2 site investigation budget to the Agency for its review.

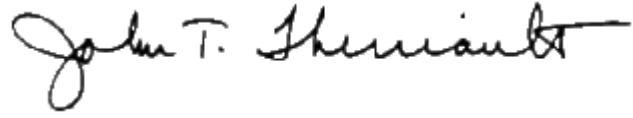
ORDER

1. The Board denies the Illinois Environmental Protection Agency's October 13, 2015 motion for reconsideration.
2. The Board declines to exercise its discretion to award legal fees requested by Chatham BP in its October 28, 2015 response.
3. Having concluded its consideration of the issues presented in this appeal, the Board remands Chatham BP, LLC's proposed Stage 2 site investigation budget to the Agency for its review.

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) (2014); *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, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on November 5, 2015, by a vote of 5-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

John T. Therriault, Clerk
Illinois Pollution Control Board