

ILLINOIS POLLUTION CONTROL BOARD
March 7, 2002

E & L TRUCKING COMPANY,)	
)	
Petitioner,)	
)	
v.)	PCB 02-101
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	(90-Day Extension)
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by C.A. Manning):

On January 25, 2002, the parties filed a joint notice to extend the 35-day period within which E & L Trucking Company (E & L) may appeal a January 4, 2002 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2000); 35 Ill. Adm. Code 105.206(c), 105.208(a), (c). This determination concerned E & L's application for reimbursement from the Underground Storage Tank Fund for corrective action at a site located at 12625 Hamlin Court, Alsip, Cook County. For the reasons explained below, the Board declines to enter an order extending any appeal period concerning the January 4, 2002 determination, and dismisses this docket.

The January 4, 2002 letter pertains to an earlier Agency determination, made on October 2, 2001, regarding this same reimbursement request. The October 2, 2001 determination has already been appealed to the Board and is today accepted for hearing in a separate order. *See E & L Trucking Co. v. IEPA*, PCB 02-53 (Mar. 7, 2002).

There can be only one final, appealable Agency determination on a petition for reimbursement. *See Reichold Chemicals Inc. v. Pollution Control Board*, 204 Ill. App. 3d 674, 561 N.E. 2d 1343 (3rd Dist. 1990). Specifically, the court in *Reichold Chemicals* held that the Agency could not, under then-existing statutory authority, change or reconsider the determination it made at the conclusion of the statutory decision-making period. The statutory scheme at the time *Reichold Chemicals* was decided contemplated a prompt determination from the Agency followed by a 35-day period in which the applicant might appeal to the Board. The court recognized that the applicant's only options when faced with a decision it did not agree with would be to file a new application with the Agency or to file a petition for review with the Board. Specifically, the court stated that, "[r]equests to modify or reconsider are not permissible under the present statutory scheme." *Reichold Chemicals*, 4 Ill. App. 3d 674, 677, 561 N.E.2d 1343, 1346. Further, it suggested that, "[a]ny hardships resulting from this arrangement should be redressed by the Illinois Legislature." *Reichold Chemicals*, 4 Ill. App. 3d 674, 677, 561 N.E.2d 1343, 1346.

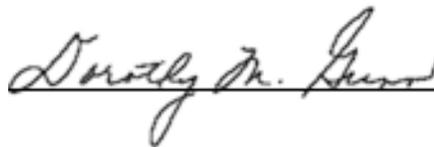
In 1997, the legislature amended Section 40(a)(1) of the Act to provide that the parties, by agreement, may extend the 35-day appeal period for an additional 90 days, giving a total of 125 days in which to file an appeal. *See* 415 ILCS 5/40(a)(1), effective July 30, 1997. This 90-day extension period has been widely accepted as a statutory period of time in which the Agency and the applicant may continue to narrow the issues of the determination that may be the subject of the appeal. Thus, the legislature contemplated that the Agency might modify its original decision after considering further argument and information from the petitioner during this extension period.

In this case, in response to the Agency's initial October 2, 2001 determination, the petitioner timely filed a notice of intention to appeal and timely perfected that appeal subsequent to the Board's grant of a 90-day extension of the appeal period, in Board docket PCB 02-53. During the 90-day extension period, the Agency agreed to modify its original determination, thereby narrowing the issues on appeal before the Board. This January 4, 2002 modification of the initial October 2, 2001 determination is now properly before the Board, but will be heard in the context of the petitioner's original appeal, docketed as PCB 02-53, which the Board has today accepted for hearing. *See E & L Trucking Co. v. IEPA*, PCB 02-53 (Mar. 7, 2002). The Agency is advised that future permit appeals of any modifications made during the 90-day extension period will be heard in the permit appeal of the Agency's initial determination. For example, in this case, the Agency's January 4, 2002 determination, and any record developed therein, should be included in the record that the Agency files in the appeal docketed as PCB 02-53.

Thus, this docket is dismissed as unnecessary.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 7, 2002, by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board