

ILLINOIS POLLUTION CONTROL BOARD

August 20, 2009

IN THE MATTER OF:)
)
PETITION OF MAXIMUM INVESTMENTS,) R09-22
LLC FOR A RULE OF GENERAL) (Rulemaking - Land)
APPLICABILITY 35 ILL. ADM. CODE 618)
)

ORDER OF THE BOARD (by G.T. Girard):

On June 25, 2009, Maximum Investments, LLC (petitioner) filed a proposal for rule of general applicability pursuant to Section 28 of the Environmental Protection Act (Act) (415 ILCS 5/28 (2006)). The proposal (Prop.) asks that the Board propose language that would have the review and evaluation services performed by the Illinois Environmental Protection Agency (Agency) under Section 22.2b(a)(3) of the Act (415 ILCS 5/22.2b(a)(3) (2008)) be identical to the review performed by the Agency under the site remediation program. Prop. at 1. On July 9, 2009, the Agency filed a motion to dismiss the petition (Mot.).

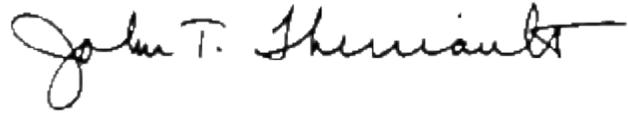
In the motion to dismiss, the Agency argues that the Board lacks authority to adopt regulations under Section 22.2b of the Act (415 ILCS 5/22.2b (2008)) as rulemaking authority for that section of the Act was given to the Agency. Mot. at 1. In the alternative, the Agency argues that the petition fails to satisfy the content requirements for Board regulatory proposals. *Id.* The Agency notes that the proposal is not drafted in accordance with the rules of the Secretary of State and the Joint Committee on Administrative Rules found at 1 Ill. Adm. Code 100.Subpart C. The Agency also notes that the proposal is not accompanied by a statement of reasons or a justification for the inapplicability or unavailability of materials incorporated by reference. Mot. at 1-2.

Petitioners have not filed a response to the motion and therefore have waived any objection to the granting of the motion. *See* 35 Ill. Adm. Code 101.500(d).

The Board need not determine whether the Board or the Agency has the authority to adopt rules under Section 22.2b of the Act (415 ILCS 5/22.2b (2008)). The Board finds that the petition has substantial deficiencies as pointed out by the Agency, and the petitioners' have failed to respond to the Agency's motion to dismiss. Therefore, the Board grants the Agency's motion to dismiss and dismisses the petition.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on August 20, 2009, 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 flourish extending to the right.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board