

ILLINOIS POLLUTION CONTROL BOARD
July 11, 2013

JAY BELL'S 66,)
)
Petitioner,)
)
v.) PCB 13-54
) (UST Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by J.D. O'Leary):

On April 10, 2013, Jay Bell's 66 (JB66) timely filed a petition seeking the Board's review of a March 6, 2013 determination by the Illinois Environmental Protection Agency (Agency). The Agency's determination concerns JB66's leaking underground storage tank (UST) site located at 1213 East McClure in Peoria, Peoria County. Specifically, the Agency deducted \$6,970 from JB66's request for reimbursement from the UST Fund.

In an order dated April 18, 2013, the Board accepted JB66's petition for hearing. On May 8, 2013, the Agency filed a motion to dismiss the petition without prejudice (Mot.). JB66 did not respond to the motion and therefore waives any objection to it being granted. *See* 35 Ill. Adm. Code 101.500(d). For the reasons below, the Board denies the Agency's dismissal motion. In this order, the Board describes the motion before discussing the Board's ruling.

MOTION TO DISMISS

The Agency argues that JB66's petition for review fails to satisfy the Board's procedural rules because the petition does not include the date of service of the Agency's final decision or a statement specifying the grounds of appeal. Mot. at 2, citing 35 Ill. Adm. Code 105.108(a), 105.408(b), (c). On the latter point, the Agency asserts that the petition lacks the requisite specificity because it provides only "boilerplate language that Petitioner's counsel has employed nearly verbatim in multiple prior [leaking UST] cases." Mot. at 2. In doing so, the petition, according to the Agency, merely states that "the Petitioner and its environmental consultant disagree with [the Agency's] decision," without explaining "the reasons for disagreement." *Id.* The Agency asks for dismissal without prejudice to allow for the filing of an amended petition that meets the content requirements of the Board's procedural rules. *Id.*

DISCUSSION

In ruling upon a motion to dismiss, the Board takes all well-pled allegations as true and draws all reasonable inferences from them in favor of the non-movant. *See, e.g., In re Chicago Flood Litigation*, 176 Ill. 2d 179, 184 (1997); *United City of Yorkville v. Hamman Farms*, PCB

08-96, slip op. at 14 (Oct. 16, 2008); Joe's Midtown Auto Repair v. IEPA, PCB 07-143, slip op. at 2 (Oct. 18, 2007); Lone Star Industries, Inc. v IEPA, PCB 03-94, slip op. at 2 (Mar. 6, 2003). Accordingly, the Board "must interpret all pleadings and supporting documents in the light most favorable to the nonmoving party." Chicago Flood, 176 Ill. 2d at 189.

The Agency maintains that the petition should be dismissed because the grounds pled for appealing the Agency's determination are not sufficiently specific. Section 105.408 of the Board's procedural rules requires a petition for review of an Agency UST determination to set forth, among other things, "[a] statement specifying the grounds of appeal." 35 Ill. Adm. Code 105.408(c). Construing this petition in the light most favorable to JB66, the Board finds that the petition sufficiently pleads grounds for appeal.

The petition first recounts each of the Agency's reasons for deducting \$6,970 from the requested reimbursement amount of \$17,156. Petition at 2. \$6,370 in deductions appears to have been based upon the Agency's belief that fewer hours than claimed by JB66 would have been sufficient to perform the given task. *Id.* A \$600 deduction was also made for review of a Highway Authority Agreement (HAA), purportedly because the Agency had already approved a groundwater ordinance for the area. *Id.* The petition counters these reasons for deductions by alleging that the requested reimbursement amounts are "reasonable, customary, and necessary for the proper completion of the project and site closure," adding that "all of the costs [deducted] were actually and legitimately expended and performed." *Id.* In addition, the petition states that the scope of work performed was "within the guidelines pre-approved by the IEPA." *Id.* The petition also provides a summary of work completed (*id.*, Exhibit A), which describes the HAA as "an institutional control to address the soil contamination potentially present beneath Prospect and McClure," as well as a copy of the budget amendment (with hours and rates) on which the Agency took the final action at issue (*id.*, Exhibit B). Taking all well-pled allegations of the petition as true and drawing all reasonable inferences from them in favor of JB66, the Board finds that the petition satisfies Section 105.408(c).

Further, though the Agency correctly notes that the petition fails to state the date on which JB66 was served with the Agency's final decision, the omission is harmless. The Board's procedural rules do require a petition for review to provide "[a] statement specifying the date of service of the Agency's final decision." 35 Ill. Adm. Code 105.408(b). This information enables the Board to readily determine whether the petition has been filed within the statutory 35-day appeal period and, in turn, whether the Board has jurisdiction to hear the appeal. *See* 415 ILCS 5/40(a)(1) (2010); 35 Ill. Adm. Code 105.404; A&H Implement Co. v. IEPA, PCB 12-53, slip op. at 8 (May 17, 2012) ("Board does not have jurisdiction to review Agency final determinations which are not appealed to the Board within the 35 day period prescribed by Section 40 of the [Environmental Protection] Act"). Though the date of service is lacking in this petition, it remains clear that the petition was timely filed. The Agency's final decision was issued on March 6, 2013. Even if JB66 was served on that date, any petition would not have been due until April 10, 2013. The petition was filed on April 10, 2013, and therefore was necessarily filed on time.

The Board denies the Agency's motion to dismiss and orders the parties to proceed expeditiously to hearing.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 11, 2013, by a vote of 4-0.

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