

ILLINOIS POLLUTION CONTROL BOARD
July 11, 2013

CONSOLIDATED ICE COMPANY,)	
)	
Petitioner,)	
)	
v.)	PCB 13-56
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by C.K. Zalewski):

On April 18, 2013, at the parties' request, the Board extended until July 16, 2013, the time period for Consolidated Ice Company (Consolidated Ice) to appeal a March 5, 2013 determination of the Illinois Environmental Protection Agency (Agency). The Agency's determination concerns Consolidated Ice's leaking underground storage tank (UST) site located at 5300 Collinsville Road in Fairmont City, St. Clair County. On July 8, 2013, Consolidated Ice timely filed a petition (Pet.) asking the Board to review the Agency's determination. For the reasons below, the Board accepts the petition as timely filed but requires that an amended petition be filed by August 12, 2013, to cure deficiencies noted below.

DISCUSSION

Under the Environmental Protection Act (Act) (415 ILCS 5 (2010)), the Agency decides whether to approve proposed cleanup plans and budgets for leaking UST sites, as well as requests for cleanup cost reimbursement from the State's UST Fund, which consists of UST fees and motor fuel taxes. If the Agency disapproves or modifies a submittal, the UST owner or operator may appeal the decision to the Board. *See* 415 ILCS 5/40(a)(1), 57-57.17 (2010); 35 Ill. Adm. Code 105.Subpart D. In this case, the Agency determined that reimbursement of corrective action costs will be apportioned at an 86% rate based upon the volume of eligible tanks. Consolidated Ice appeals on the grounds that the Agency's apportionment is erroneous because remediation of any contamination from the ineligible tank is neither required nor proposed. Consolidated Ice's petition meets the content requirements of 35 Ill. Adm. Code 105.408.

The Board accepts Consolidated Ice's petition as timely filed but finds that the petition is deficient. Consolidated Ice's petition was filed by a non-attorney, Thomas L. Herlacher, Professional Engineer and Principal Engineer with Herlacher Angleton Associates, LLC, an environmental engineering firm. The petition states that "[w]e see no . . . need to hire an attorney at considerable cost to represent our client . . ." Pet. at 1. However, in an adjudicatory proceeding before the Board, such as this UST appeal, any party other than an individual must be represented by an attorney licensed and registered to practice law. *See* 35 Ill. Adm. Code

101.400(a)(2). Accordingly, by August 12, 2013, which is the first business day following the 30th day after the date of this order, Consolidated Ice must file an amended petition for review accompanied by the appearance of an attorney. *See* 35 Ill. Adm. Code 101.400(a)(2). Failure to do so will subject this appeal to dismissal.

The petition also claims that “[w]e see no need to appear before the IPCB for an oral presentation . . . simply to reiterate the facts as they are stated [in the petition].” Pet. at 1. The Board notes, however, that the Act requires the Board to hold a hearing in UST appeals, unless the Board disposes of the case by granting a motion for summary judgment. *See* 415 ILCS 5/40(a)(1), 57.7(c)(4), 57.8(i) (2010); 35 Ill. Adm. Code 105.412.

In addition, the petition asks not only that the Board reverse the Agency’s apportionment determination, but also that the Board “annul” the Board’s regulation on apportionment (35 Ill. Adm. Code 734.640) and require the Agency to “develop and apply an apportionment method that is scientifically sound and does not rely upon their whimsical and arbitrary judgement [*sic*].” Pet. at 2. The Board observes that judicial review could have been but was not sought when the cited apportionment regulation was adopted. *See* 415 ILCS 5/29(a) (2010); Proposed Amendments to Regulation of Petroleum Leaking Underground Storage Tanks (35 Ill. Adm. Code 734), R04-23(a) (Feb. 16, 2005). The Act therefore prohibits any challenge in this appeal to the regulation’s validity or application. *See* 415 ILCS 5/29(b) (2010). Accordingly, the Board, on its own motion, strikes this requested relief from the petition.¹

CONCLUSION

The Board accepts Consolidated Ice’s petition as timely filed but does not accept the matter for hearing at this time. On its own motion, the Board strikes the petition’s request that the Board repeal a regulation in this proceeding. The Board requires Consolidated Ice to file an amended petition through an attorney by August 12, 2013. Upon the timely filing of an amended petition, the Board’s statutory 120-day period for deciding this appeal will recommence. *See* Ill. Adm. Code 105.114(b). The Agency is not required to file the record of its determination until the 30th day after the date on which a compliant amended petition is filed.

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.



John T. Therriault, Clerk
Illinois Pollution Control Board

¹ Anyone may file a rulemaking proposal with the Board to amend a regulation. *See* 415 ILCS 5/28(a) (2010); 35 Ill. Adm. Code 102.200.