

ILLINOIS POLLUTION CONTROL BOARD
September 9, 1999

NATIONAL CASTING, INC.,)
)
 Petitioner,)
)
 v.) PCB 00-23
) (UST - Reimbursement)
 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)
)
 Respondent.)
)

ORDER OF THE BOARD (by R.C. Flemal):

On July 2, 1999, the Illinois Environmental Protection Agency (Agency) issued a final decision, denying the request of National Castings, Inc. (petitioner) for reimbursement from the Underground Storage Tank Fund. On August 6, 1999, petitioner filed a request that the Agency grant a 90-day extension of the 35-day appeal period. The Agency subsequently denied the request for an extension by letter dated August 10, 1999. The ground for the denial of the extension was that the request, received by the Agency on August 6, 1999, was not timely. On August 9, 1999, the Board entered an order granting a 90-day extension of the 35-day appeal period. The Board subsequently discovered that the order had been prematurely entered.

Because the Agency did not concur in the request for an extension, the statutory conditions for the extension have not been met. Accordingly, the Board cannot grant a 90-day extension of the 35-day appeal period in which to file an appeal pursuant to Section 40(a)(1) of the Environmental Protection Act (415 ILCS 5/40(a)(1) (1998)). The Board can, however, construe petitioner's letter requesting an extension of the 35-day time period as a petition for review so that petitioner will not lose its right to file an appeal of the Agency's determination. ¹ See, e.g., Jake Seabury v. Illinois Environmental Protection Agency (June 17, 1998), PCB 98-147, slip op. at 1; North Shore Sanitary District v. Illinois Environmental Protection Agency (May 7, 1998), PCB 98-149, slip op. at 1; Gibson Service Station v. Illinois Environmental Protection Agency (June 5, 1997), PCB 97-198, slip op. at 1; Southern Food Park, Inc. v. Illinois Environmental Protection Agency (August 3, 1995), PCB 96-15, slip op. at 1; Alloy Casting & Engineering Co. v. Illinois Environmental Protection Agency (August 3, 1995), PCB 96-8, slip op. at 1; Stone Container Corp. v. Illinois Environmental Protection Agency (August 3, 1995), PCB 96-4, slip op. at 1.

This petition was filed on petitioner's behalf by a consulting firm, Gabriel Environmental Services. Although the Board's current procedural rules would allow the petitioner to be represented by a non-attorney (see 35 Ill. Adm. Code 101.107(a)(2)), the Board recently held that these rules violated the provisions of the Attorney Act (705 ILCS 205/1 (1998)) and the Corporation Practice of Law Prohibition Act (705 ILCS 220/1 (1998)). See In the Matter of: Petition of Recycle Technologies, Inc. for an Adjusted Standard from 35 Ill. Adm. Code 720.131(c) (July 10, 1997), AS 97-9. Specifically, the Board found that a non-attorney could not represent a corporation in an adjusted standard proceeding without violating both the Attorney Act and the Corporation Practice of Law Prohibition Act. The Board has also held that a non-attorney could not represent a not-for-profit corporation in a landfill siting appeal pursuant to Section 40.1(b) of the Act (415 ILCS 5/40.1(b) (1998)). Sierra Club v. Jim Bensman

¹ An appeal contesting the validity of the Agency's determination could have been brought to the Board within 35 days after the Agency's final determination. See 415 ILCS 5/57.7(c)(4)(D) (1998); 415 ILCS 5/40(a)(1) (1998); 35 Ill. Adm. Code 732.502(f). The 35-day appeal period could have, however, been extended "for a period of time not to exceed 90 days by written notice provided to the Board from the applicant and the Agency within the initial appeal period." 415 ILCS 5/40(a)(1) (1998). Thus, any complete notice was due to be filed with the Board or postmarked no later than August 6, 1999, 35 days after the Agency's final determination. Petitioner's request was filed on August 6, 1999.

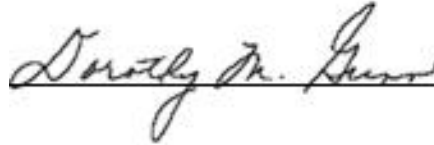
(October 2, 1997), PCB 98-43. The Board believes that the rationale employed to find that a non-attorney was prohibited from representing a corporation in an adjusted standard proceeding or in a landfill siting appeal applies equally to the situation presented in this matter. Accordingly, petitioner must be represented by an attorney. The Board grants petitioner 30 days in which to retain an attorney and for that attorney to file an amended petition in this case on the petitioner's behalf. If the petitioner does not file an amended petition for review within this time period, including proof of service of the amended petition on the Agency, this matter will be dismissed, and the docket closed.

The 120-day statutory period in which the Board must render a final decision will begin running as of the date of the filing of the amended petition. Additionally, a \$75 filing fee will be required at such time as petitioner files the amended petition (see 35 Ill. Adm. Code 101.120(b)(3)).

IT IS SO ORDERED.

Board Member G.T. Girard dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 9th day of September 1999 by a vote of 5-1.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board