

ILLINOIS POLLUTION CONTROL BOARD
July 10, 1997

RIVERVIEW FS,)	
)	
Petitioner,)	
)	PCB 97-226
v.)	(UST - Reimbursement)
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

INTERIM OPINION AND ORDER OF THE BOARD (by K.M. Hennessey):

This matter comes before the Board on the June 17, 1997 petition of Stan Tobias, Riverview FS (petitioner). Petitioner seeks review of the Illinois Environmental Protection Agency's (Agency) decision on petitioner's request for reimbursement of certain costs petitioner incurred in remediating a leaking underground storage tank (UST) site at 1925 Meridan Road, Rockford, Illinois (site).

The petition was filed by Steve Thornhill, CPG, Environmental Consultant/Geologist of Terra Nova Research, Inc. "on behalf of Mr. Stan Tobias, Riverview FS." Petition at 1. The petition does not indicate that Mr. Thornhill is an attorney. As explained below, Illinois law allows only attorneys to represent others before the Board. Therefore, the Board does not accept this case for hearing, but orders petitioner to file an amended petition within 45 days from the date of this order.

The Board further notes that the petition does not disclose whether petitioner is a corporation or a sole proprietorship. If petitioner is a corporation, Illinois law requires petitioner to file the amended petition through an attorney. If petitioner is an unincorporated sole proprietorship, Illinois law allows petitioner to represent himself without the aid of an attorney. In that event, petitioner must file the amended petition on his own behalf, over his own signature. This order is necessary to ensure that any decision of the Board in this matter is not subject to challenge on the grounds that a non-attorney represented petitioner,

DISCUSSION

In another case before the Board today, In re: Petition of Recycle Technologies, Inc. (July 10, 1997), AS 97-9 (RTI), the Agency argued that the Attorney Act (705 ILCS 205/1 *et seq.* (1996)) and the Corporation Practice of Law Prohibition Act (CPLP Act) (705 ILCS 220/1 *et seq.* (1996)) apply to the practice of law before the Board. Section 1 of the Attorney Act provides in part: "No person shall be permitted to practice as an attorney or counselor at law within this State without having previously obtained a license for that purpose from the

Supreme Court of this State.” 705 ILCS 205/1 (1996). Section 1 of the CPLP Act specifically prohibits corporations from practicing law: “It shall be unlawful for a corporation to practice law or appear as an attorney at law for any reason in any court in this state or before any judicial body.” 705 ILCS 220/1 (1996). In RTI, the Agency argued that these laws did not allow a non-attorney to represent a corporation in an adjusted standard proceeding before the Board. See RTI (July 10, 1997), AS 97-9, slip op. at 3, citing People v. Goodman, 366 Ill. 346, 357, 8 N.E.2d 941, 947, cert. denied, 302 U.S. 728 (1937) (“The character of the act done, and not the place where it is committed, is the factor which is decisive of whether it constitutes the practice of law.”). The Board agreed. Although the Agency has not objected to Mr. Thornhill’s appearance in this case, the Board finds that these laws apply in this case as well.

In support of its findings in RTI, the Board relied on a series of cases in which the courts had held that representation of a person or corporation in pre-trial and trial proceedings was the practice of law. See, e.g., Midwest Home Savings & Loan v. Ridgewood, 123 Ill. App. 3d 1001, 463 N.E.2d 909 (5th Dist. 1984) (filing of notice of appeal is the practice of law); Marken Real Estate & Management Corporation v. Adams, 56 Ill. App. 3d 426, 371 N.E.2d 1192 (1st Dist. 1977) (representation in pretrial proceedings constitutes the practice of law). The same cases compel the Board to find that Mr. Thornhill’s representation of a party seeking review of an IEPA decision on a request for reimbursement of UST cleanup costs constitutes the practice of law.

In RTI, the Board also found that no exceptions allowed a non-attorney to represent a corporation before the Board in that case. RTI (July 10, 1997), AS 97-9, slip op. at 5. The exceptions in the Attorney Act that allow non-attorneys to practice before certain administrative agencies do not extend to the Board. See 720 ILCS 205/11 (1996). Similarly, the exceptions in the CPLP Act do not apply to practice before the Board. 720 ILCS 220/5 (1996); RTI (July 10, 1997), AS 97-9, slip op. at 5. For the same reasons, the Board also finds that no exceptions to these laws allow Mr. Thornhill to represent petitioner in this case.

This case differs from RTI in one respect: here, unlike in RTI, the petition does not make clear whether petitioner is a corporation or an unincorporated sole proprietorship. In either case, however, Mr. Thornhill may not represent petitioner. See, e.g., Blue v. Illinois, 223 Ill. App. 3d 594, 597, 585 N.E.2d 625, 626 (2d Dist. 1992) (Attorney Act prohibited father from representing minor son in habeas corpus complaint); Marken, 56 Ill. App. 3d at 429, 371 N.E.2d at 1194 (CPLP Act requires corporation to appear through an attorney).

In RTI, the Board also found that dismissal of the case was unwarranted, even though a non-attorney had initiated the case by filing the petition. The Board noted that a Board rule allowed non-attorneys to represent corporations in such cases, and that the Agency had never before objected to the rule. The Board found the situation analogous to that in Janiczek v. Dover Management Co., 134 Ill. App. 3d 543, 481 N.E.2d 25 (1st Dist. 1985), in which the client unwittingly retained a disbarred attorney to file a case on his behalf. After discovering that his attorney had been disbarred, the client retained substitute counsel. The court found that the initial participation of the disbarred attorney did not render the proceedings a nullity,

given the special circumstances in that case. In RTI, the Board found that the Board's rules, and the Agency's prior conduct, also created special circumstances that justified a departure from the general rule. RTI (July 10, 1997), AS 97-9, slip op. at 6.

Similar special circumstances exist here. If petitioner is a corporation, the Board's rules allow a non-attorney to appear in this case. See 35 Ill. Adm. Code 101.107(a)(2). If petitioner is not a corporation, the Board's rules allow any "representative" to represent petitioner in this case. See 35 Ill. Adm. Code 101.107(a)(3).¹ The Agency has never objected to this rule. Given the current rules and the absence of any challenge to this rule, as described more fully in RTI, the Board finds that Mr. Thornhill reasonably could have assumed that he could represent petitioner in this proceeding. For that reason, and the other reasons cited in RTI, the Board finds dismissal of this case unwarranted.

To ensure that any decision of the Board in this matter is not subject to challenge on the grounds that a non-attorney represented petitioner, however, the Board orders petitioner to file an amended petition within 45 days of the date of this order. If petitioner is a corporation, petitioner must file its amended petition through an attorney. If petitioner is an unincorporated sole proprietorship, petitioner may file an amended petition through an attorney, or petitioner may file an amended petition on his own behalf, over his own signature. After petitioner files a proper amended petition, the Board will determine whether to accept this matter for hearing.

ORDER

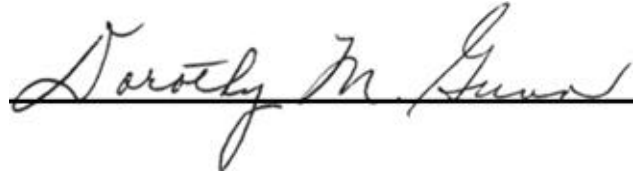
1. Petitioner is ordered to file an amended petition within 45 days of the date of this order.
2. If petitioner is a corporation, petitioner must file its amended petition through an attorney, who also must file an appearance. If petitioner is an unincorporated sole proprietorship, petitioner may file its amended petition through an attorney or on its own behalf, over petitioner's signature.

IT IS SO ORDERED.

Board Member J.T. Meyer dissented.

¹ The Board has proposed revisions to its rules that would allow only an attorney to file an appearance on behalf of a corporation or another individual. See In re: Revision of the Board's Procedural Rules: 35 Ill. Adm. Code 101-130 (October 3, 1996), R97-8, slip op. at 10-11.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 10th day of July 1997, by a vote of 5-1.

A handwritten signature in cursive script that reads "Dorothy M. Gunn". The signature is written in black ink and is positioned above a solid horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board