

ILLINOIS POLLUTION CONTROL BOARD

November 3, 2005

E & L TRUCKING COMPANY,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 06-50
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by T.E. Johnson):

On October 11, 2005, E & L Trucking Company (E & L) filed a petition asking the Board to review a September 14, 2005 determination of the Illinois Environmental Protection Agency (Agency). In its determination, the Agency found E & L's application for reimbursement incomplete. The application concerns E & L's leaking underground petroleum storage tank facility located at 12625 Hamlin Court, Cook County. On October 15, 2005, the Agency filed a motion to dismiss the petition. E & L filed a response to the motion on October 28, 2005.

In the motion, the Agency asserts that the petition by E & L did not specify the date of service of the Agency's final decision upon the petitioner or any grounds for appeal. Mot. at 1. The Agency contends the petition merely recites a timeline of events leading up to the issuance of the September 14, 2005 final decision. *Id.* The Agency requests that the Board dismiss the petition or, in the alternative, require that a petition meeting the filing and content requirements be filed within the time allowed by Section 40 of the Illinois Environmental Protection Act (Act). Mot at 2.

In response, E & L asserts that although the Agency allegedly sent the September 14, 2005 final determination by certified mail, the actual date of receipt/service of this final determination by E & L from the Agency is not known. Resp. at 1. E & L contends that counsel for the Agency has indicated that it is the Agency's position that final determinations concluding that applications or submittals are incomplete are not subject to Board review. Resp. at 2. E & L contends that although the actual date of service upon E & L is unknown, it is clear that the petition for review filed on October 11, 2005, is timely and that E & L disputes the Agency's incompleteness finding. *Id.*

E & L contends that the final determination is both confusing and inconsistent with prior Agency determinations related to these same or identical costs. Resp. at 2. E & L asserts that its efforts to identify costs and reconcile previous reimbursements with the Agency have received no response from the Agency despite repeated assurances from Agency counsel that the Agency would identify and provide any detail necessary to address the Agency's concerns. Resp. at 3.

E & L argues that it is not possible or reasonable to require it to identify all possible grounds for appeal at the initial time of filing and that the Agency has not alleged or established any prejudice as a result of the alleged deficiencies within the petition. *Id.* E & L asks that the Board deny the Agency's motion or grant E & L leave to file an amended petition as necessary. *Id.*

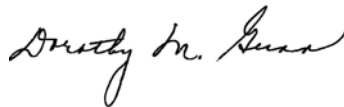
The Board grants the Agency's motion as follows. The Board accepts this matter as timely filed, pursuant to 35 Ill. Adm. Code 105.404. However, the Board finds that E & L's petition is deficient. As asserted by the Agency, section 105.408 of the Board's procedural rules provides that a petition to appeal an Agency decision concerning a leaking underground storage tank must contain, *inter alia*, a statement specifying the date of service of the Agency's final decision and a statement specifying the grounds of appeal. *See* 35 Ill. Adm. Code 105.408. E & L's petition merely requests that the Agency's decision be reversed, and does not contain any specific grounds of appeal. Further, the petition does not provide the date of service of the Agency's decision.

E & L's assertion that it is clear that the petition is timely, and that E & L disputes the Agency's incompleteness finding, does not alter the fact that the petition fails to meet the requirements set forth in the Board's procedural rules. The Board is not convinced by E & L's contention that the actual date of service of the final determination is unknown. E & L has not alleged that it did not receive service of the final determination, and such information is clearly, then, within E & L's realm of knowledge as well as being specifically required by Board regulation. In addition, the Board is not convinced by E & L's argument that the Agency has not alleged or established any prejudice as a result of the alleged deficiencies within the petition. E & L's petition fails to meet the minimum filing requirements set forth in the Board's regulations. No showing of prejudice is necessary to find the petition deficient.

E & L is hereby given 30 days to correct the deficiencies as set forth in this order. E & L must file an amended petition on or before December 3, 2005. If an amended petition correcting the deficiencies is not timely filed, this petition will be dismissed. The filing of an amended petition will restart the Board's decision deadline. *See* 35 Ill. Adm. Code 105.114(b).

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 3, 2005, by a vote of 5-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board