

ILLINOIS POLLUTION CONTROL BOARD  
January 10, 2008

INTERSTATE OIL, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 08-38
	)	(NPDES Fee Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by G.T. Girard):

On December 17, 2007, Interstate Oil, Inc. (Interstate Oil) filed a petition (Pet.) asking the Board to review a final determination of the Illinois Environmental Protection Agency (Agency). The determination concerns the Agency's assessment of fees associated with the National Pollutant Discharge Elimination System (NPDES) permit issued for Interstate Oil's facility in Shorewood, Will County. *See* 415 ILCS 5/5(d), 12.5, 13, 13.3, 40(a)(1) (2006); 35 Ill. Adm. Code 105.204(f). Interstate Oil filed the requisite \$75 filing fee on December 20, 2007. *See* 415 ILCS 5/7.5 (2006); 35 Ill. Adm. Code 101.302(e)(3). For the reasons below, the Board declines to accept Interstate Oil's petition for hearing but grants Interstate Oil leave to file an amended petition.

In its petition, Interstate Oil requests a hearing on the Agency's final determination that the company "owes certain fees" totaling \$38,750 in connection with NPDES permit No. IL0072702. Pet. at 1, 3. The petition asserts that its is "submitted pursuant to 415 ILCS 5/12.5(b) and 35 Ill. Admin. Code §105.100 *et seq.*" Pet. at 1. Interstate Oil claims that the Agency violated Section 12.5(b) of the Environmental Protection Act (415 ILCS 5/12.5(b) (2006)) by failing to give the company proper notice of the NPDES permit fees. Pet. at 1. Section 12.5(b) states that the Agency "shall send a fee notice by mail to each existing permittee subject to a fee under this Section at his or her address of record." Pet. at 2, quoting 415 ILCS 5/12.5(b) (2006). This failure of the Agency to comply with its statutory obligation, according to Interstate Oil, harmed the company, which would have otherwise sought to terminate the permit and thereby avoid the demanded \$38,750 in fees. Pet. at 1, 3-5. Interstate Oil seeks a Board ruling that the company is not liable for these charges. Pet. at 1, 5.

Interstate Oil attaches to its petition an Agency letter of October 24, 2007, stating that "[t]his determination of fee amount constitutes final action by the Agency regarding your dispute." Pet., Attachment 4. According to the petition, the Agency on November 20, 2007, "granted Petitioner's request to extend the time available to Petitioner for appeal," so that settlement could be pursued. Pet. at 3. However, continues Interstate Oil, the Agency "issued its second 'final action' denying Petitioner's protest on December 12, 2007." *Id.*

The Board cannot accept Interstate Oil's petition as filed. Any appeal of a final Agency determination must be filed within 35 days after service. The appeal period may be extended only by Board order if a joint request for extension is filed with the Board within the original 35-day period. *See* 415 ILCS 5/40(a)(1) (2006); 35 Ill. Adm. Code 105.206(a), (c), 105.208(a). If a petition is not timely filed, the Board lacks jurisdiction to hear the appeal. *See, e.g., Illinois Ayers Oil Co. v. IEPA*, PCB 05-48 (Mar. 17, 2005) ("The Board has consistently held that the Board cannot and does not accept petitions for review filed outside the statutory time deadline."). In addition, a petition for review must attach the final Agency determination being appealed and state when the determination was served on petitioner. *See* 35 Ill. Adm. Code 105.210(a), (b).

Here, the Board did not receive a request from the Agency and Interstate Oil to extend the 35-day period for appealing the Agency's October 24, 2007 final determination. Accordingly, any appeal of that determination was due 35 days after Interstate Oil was served with the determination. Interstate Oil's petition, however, does not state when the October 24, 2007 determination was served on the company. Further, Interstate Oil asserts that the Agency issued a "second 'final action'" on December 12, 2007, but the petition fails to attach that determination. The Board directs Interstate Oil to file an amended petition by February 13, 2008, curing these informational deficiencies. Failure to do so will subject this appeal to dismissal. *See* 35 Ill. Adm. Code 105.108.

In addition, Interstate Oil's petition was filed by a Boulder, Colorado attorney without an appearance and without any indication that she is licensed and registered to practice law in Illinois. By February 13, 2008, counsel for Interstate Oil must file either an appearance documenting that she is licensed and registered to practice law in Illinois or an appearance accompanied by a motion to appear *pro hac vice*. *See* 35 Ill. Adm. Code 101.400(a).

The 120-day statutory period for the Board to render a final decision will commence upon the filing of the amended petition. *See* 35 Ill. Adm. Code 105.114(b). The Agency record must be filed within 30 days after Interstate Oil files the amended petition. *See* 35 Ill. Adm. Code 105.116, 105.212.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 10, 2008, by a vote of 4-0.



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John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board