

ILLINOIS POLLUTION CONTROL BOARD
February 21, 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).

Interstate Oil attached to the 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.*

On January 10, 2008, the Board found that the petition as filed was deficient. Specifically, the Board stated:

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. . . . 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.

On February 11, 2008, the Board received the amended petition (Am.Pet). Interstate Oil attached the October 24, 2007 denial letter from the Agency as well as several emails that included a December 12, 2007 email. *See* Am.Pet. Attachments 3, 4, and 5. Interstate Oil asserts that the December 12, 2007 email is the Agency's final decision and thus the December 17, 2007 petition for review was timely. Am.Pet. at 5-6. The Board disagrees. As stated previously, the appeal deadline may only be extended by order of the Board. *See* 415 ILCS 5/40(a)(1) (2006); 35 Ill. Adm. Code 105.206(a), (c), 105.208(a). In this case, the Board received no joint request and therefore any appeal was due 35 days from October 24, 2007. Therefore, the petition for review is not timely and the Board dismisses the petition and closes the docket. *See, e.g., Illinois Ayers Oil Co. v. IEPA*, PCB 05-48 (Mar. 17, 2005).

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 February 21, 2008, by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board