

ILLINOIS POLLUTION CONTROL BOARD
April 16, 2009

WAUCONDA COMMUNITY UNIT)	
SCHOOL DISTRICT #118,)	
)	
Petitioner,)	
)	PCB No. 08-39
v.)	(UST Appeal)
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by S.D. Lin):

On March 31, 2009, petitioner Wauconda Community Unit School District #118 (Wauconda) filed a "Motion to Dismiss Appeal" (Mot.). On December 19, 2007, Wauconda filed its petition asking the Board to review a November 14, 2007 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1)), 57-57.17 (2006) ; 35 Ill. Adm. Code 105.402, 105.404. The Agency's determination concerns Wauconda's leaking underground storage tank (UST) site located 225 Osage Street, Wauconda, Lake County.

Wauconda now moves to dismiss its appeal as a result of the Agency's February 4, 2009 approval of a "miscellaneous plan . . . allowing additional investigation, which will require a new Corrective Action Completion Report to be filed". Mot. at 1. Wauconda requests dismissal of this action "without prejudice", *i.e.* with leave to refile the appeal. *Id.*

The Board grants Wauconda's motion to dismiss this appeal, and closes the docket. But, the Board cannot grant the motion "without prejudice". Appeals filed under Sections 40 and 57-57.17 of the Environmental Protection Act must be filed within 35 days of the date of service of the Agency's determination. *See* 415 ILCS 5/40(a)(1)), 57-57.17 (2006). This appeal cannot be refiled, as it is now time-barred. But, Wauconda is free to file an appeal of any new Agency UST determination within 45 days of the date of Agency service of that determination.

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 16, 2009, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board