

ILLINOIS POLLUTION CONTROL BOARD
May 20, 2010

PENSKE TRUCK LEASING, LP,)
)
 Petitioner,)
)
 v.) PCB 10-93
) (UST - Appeal)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

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

On March 22, 2010, the Illinois Environmental Protection Agency (Agency) issued a final determination, denying Penske Truck Leasing, LP's (petitioner) reimbursement of corrective action costs from the Underground Storage Tank Fund. Petitioner received the Agency's decision on March 26, 2010. By letter dated and received by the Board on April 29, 2010, petitioner requested a 90-day extension of the 35-day appeal period. Any joint request for a 90-day extension of the 35-day appeal period was due on or before April 30, 2010, *i.e.*, 35 days after the Agency's final determination.¹ See 415 ILCS 5/40(a)(1) (2008). To date, the Board has not received a joint request for a 90-day extension.

Because the Agency has not filed a joint request for a 90-day extension in a timely manner, the statutory condition for the extension has not been met. Accordingly, the Board cannot grant a 90-day extension of the 35-day appeal period pursuant to Section 40(a)(1) of the Environmental Protection Act (Act) (415 ILCS 5/40(a)(1) (2008)). The Board can, however, construe petitioner's letter, described above and filed on April 29, 2010, as a timely petition for review so that petitioner will not lose its right to appeal the Agency's determination. See, *e.g.*, North Shore Sanitary District v. Illinois Environmental Protection Agency (May 7, 1998), PCB 98-149, slip op. at 1; Jake Seabury v. Illinois Environmental Protection Agency (June 17, 1998), PCB 98-147, slip op. at 1. The Board does so here.

Petitioner's request, construed as a petition for review, however, is not sufficient under the Board's rules. See 35 Ill. Adm. Code 101.103, 105.102(a). Petitioner's petition fails to specify the grounds for appeal. In addition, it is unclear whether the petition was filed by an

¹ Generally, to appeal an Agency determination, the appeal must be filed with the Board within 35 days after the Agency's final determination. See 415 ILCS 5/40(a)(1) (2008). However, the 35-day appeal period can be extended "for a period of time not to exceed 90 days by written notice provided to the Board from the applicant and the Agency within the initial appeal period." 415 ILCS 5/40(a)(1) (2008). Thus, any joint request was due to be filed with the Board no later than April 30, 2010, 35 days after petitioner received the Agency's final determination.

attorney. Petitioner's petition was signed by Scott A. Dawson, Matthew K. Otto, Eric R. Powley, project managers employed by Terracon Consultants, Inc. In an adjudicatory proceeding before the Board, like this UST appeal, anyone other than an individual must be represented by an attorney licensed and registered to practice law. *See* 35 Ill. Adm. Code 101.400(a)(2). The Board therefore gives petitioner 30 days from the date of this order to file an amended petition for review, including a copy of the Agency's determination. If the petitioner does not file an amended petition for review within this time period, including proof of service of the amended petition on the Agency, the Board will dismiss this matter and close the docket.

The 120-day statutory period in which the Board must render a final decision will begin running as of the date of the filing of the amended petition. Additionally, a \$75 filing fee will be required at such time as petitioner files the amended petition. *See* 35 Ill. Adm. Code 101.120(b)(3).

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 20, 2010, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board