

ILLINOIS POLLUTION CONTROL BOARD
May 24, 2018

TED'S STATE LINE,)	
)	
Petitioner,)	
)	
v.)	PCB 18-72
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by B.K. Carter):

On March 20, 2018, the Board received a letter on behalf of Ted's State Line requesting a hearing to review a February 20, 2018 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2016); 35 Ill. Adm. Code 101.300(b), 105.402, 105.404. The Agency's determination concerns Ted's State Line's leaking underground storage tank (UST) site located at 284 Main Street in Antioch, Lake County. Although the Board entered an order accepting the March 20, 2018 letter as a timely filed petition, the petition contained deficiencies. Ted's State Line v. IEPA, PCB 18-72, slip op. at 1 (Apr. 12, 2018). For the reasons below, the Board directs Ted's State Line to file a second amended petition or face dismissal of this appeal.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2016)), the Agency decides whether to approve proposed cleanup plans and budgets for leaking UST sites, as well as requests for cleanup cost reimbursement from the State's UST Fund, which consists of UST fees and motor fuel taxes. If the Agency disapproves or modifies a submittal, the UST owner or operator may appeal the decision to the Board. *See* 415 ILCS 5/40(a)(1), 57-57.17 (2016); 35 Ill. Adm. Code 105.Subpart D. In this case, the Agency modified Ted's State Line's corrective action budget.

On April 12, 2018, the Board entered an order directing Ted's State Line to file an amended petition by May 14, 2018. Ted's State Line, PCB 18-72, slip op. at 1. Specifically, the Board noted three deficiencies in Ted's State Line's letter: (1) Ted's State Line lacked a licensed attorney in this adjudicatory proceeding before the Board (35 Ill. Adm. Code 101.400(a)(2)); (2) the letter failed to specify the grounds for the appeal (35 Ill. Adm. Code 105.408(c)); and (3) the letter did not include the \$75 filing fee (415 ILCS 5/7.5(a) (2016); 35 Ill. Adm. Code 101.302(e)(3)). *Id.*, slip op. at 1-2.

Any amended petition curing the deficiencies noted in the Board's Order was due on May 14, 2018. Ted's State Line, PCB 18-72, slip op. at 2. On May 22, 2018, the Board received a letter from Ted's State Line postmarked May 19, 2018, which included a \$75 filing fee curing one of three deficiencies stated in the April 12 Order. Although Ted's State Line admittedly


failed to file the amended petition with the Board by the deadline set in the April 12 Order, the Board is not without jurisdiction. The Board accepts this letter as an amended petition. However, the most recent letter is still deficient.

To comply with the Act and the Board's Rules, the Board directs Ted's State Line to file a second amended petition within 21 days from the date of this order. By Thursday, June 14, 2018, Ted's State Line must file the seconded amended petition for review with the Board remedying *all* the deficiencies listed below. Failure to do so will subject this appeal to dismissal. See City of Taylorville/Taylorville Municipal Airport v. IEPA, PCB 12-57 (Nov. 3, 2011). Timely filing this second amended petition will re-start the Board's statutory 120-day deadline to decide this appeal. 35 Ill. Adm. Code 105.114(b). The second amended petition must include the following:

1. The letter postmarked May 19, 2018 is written by Mr. Ozga who appears to be the owner and operator of the UST site but not an attorney. As required under the Board's Rules, any person other than an individual appearing before the Board must appear through a licensed and registered attorney. 35 Ill. Adm. Code 101.400(a)(2). Therefore, Ted's State Line must have an attorney file an appearance on its behalf with the Board by the June 14 deadline.
2. The letter postmarked May 19, 2018 appears to suggest that the Agency's modifications to the corrective action plan budget were unreasonable. However, the specified grounds for the appeal remain unclear. Therefore, the second amended petition must clarify the basis for the appeal *and* be filed by an attorney. See 35 Ill. Adm. Code 105.408(c); 35 Ill. Adm. Code 101.400(a)(2).
3. Ted's State Line must serve a copy of the second amended petition on the Agency and file the proof of service with the Board. See 35 Ill. Adm. Code 101.304.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 24, 2018, by a vote of 5-0.



Don A. Brown, Clerk
Illinois Pollution Control Board