

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JAY BELL'S 66, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 )  
 Respondent. )

PCB No. 13-54

 ORIGINAL

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MAY 08 2013  
STATE OF ILLINOIS  
Pollution Control Board

NOTICE

John T. Therriault  
Assistant Clerk  
Illinois Pollution Control Board  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601-3218

Robert M. Riffle  
Elias, Megennes, Riffle & Seghetti, P.C.  
416 Main Street, Suite 1400  
Peoria, IL 61602

Carol Webb  
Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
P.O. Box 19274  
Springfield, IL 62794-9274

PLEASE TAKE NOTICE that I have today caused to be filed a MOTION TO DISMISS with the Illinois Pollution Control Board, a copy of which is served upon you.


Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,

Dated: May 6, 2013

Respondent,

Scott B. Sievers  
Attorney Registration No. 6275924  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
(217) 782-5544

BY:   
\_\_\_\_\_  
Scott B. Sievers  
Special Assistant Attorney General

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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JAY BELL'S 66, )  
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Petitioner, )  
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v. ) PCB No. 13-54  
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ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
)  
Respondent. )

MOTION TO DISMISS

NOW COMES the Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, by and through its counsel, Special Assistant Attorney General Scott B. Sievers, and, pursuant to 35 Ill. Adm. Code 101.500, 105.108(a), and 105.408(b)-(c), moves this honorable Board to dismiss the Petitioner's Petition for Review And Hearing/Appeal without prejudice. The Respondent states the following in support:

1. Section 105.408 of the Pollution Control Board regulations provides that a petition of a leaking underground storage tank ("LUST") final decision must contain:

- a) The Agency's final decision;
- b) A statement specifying the date of service of the Agency's final decision; and
- c) A statement specifying the grounds of appeal.

35 Ill. Adm. Code 105.408.

2. Section 105.108(a) of the Board's regulations provides that a petition of a LUST final decision "is subject to dismissal if the Board determines that: a) The petition does not contain the informational requirements set forth in Section ... 105.408 ... of this Part[.]" 35 Ill. Adm. Code 105.108(a); see *Peacock Oil Co. v. Illinois EPA*, 2009 WL 1615199 at \*1 (PCB No. 09-114;

June 4, 2009) (dismissing LUST petition for failure to specify date of service and grounds of appeal).

3. The Petition for Review And Hearing/Appeal (“Petition”) filed by the Petitioner on April 10, 2013 contains neither the date of service of the Agency’s final decision nor a statement specifying the grounds of appeal.

4. The closest the Petition comes to providing a statement specifying the grounds of appeal is on the second page under the heading “ARGUMENT”:

The IEPA rejected the Budget Amendment based upon the reasons stated on Attachment A to the denial letter. Jay Bell’s 66 and Midwest disagree with these determinations, and affirmatively state that the reimbursement amounts expended were reasonable, customary, and necessary for the proper completion of the project and site closure. Specifically, all of the costs listed on Exhibit A were actually and legitimately expended and performed. Additionally, the scope of the additional work performed was within the guidelines pre-approved by the IEPA.

Petition at 2.

5. The Petitioner’s argument is boilerplate language that Petitioner’s counsel has employed nearly verbatim in multiple prior LUST cases, with changes all but limited to his client’s name and the type of decision from which his clients appealed. *See* Pet. for Review & Hearing/Appeal at 2 in *Broadus Oil Co. v. Illinois EPA* (PCB No. 10-48); Pet. for Review & Hearing/Appeal at 2 in *Dick’s Super Service v. Illinois EPA* (PCB No. 11-63); Pet. for Review & Hearing/Appeal at 2 in *Broadus Oil Co. v. Illinois EPA* (PCB No. 12-124); and Pet. for Review & Hearing/Appeal at 2 in *Brimfield Auto & Truck v. Illinois EPA* (PCB No. 12-134).

6. Section 105.408(c) requires LUST petitions to contain “[a] statement specifying the grounds of appeal.” The term “specifying” implies specifics, yet the Petitioner’s boilerplate language only states that the Petitioner and its environmental consultant disagree with Illinois EPA’s decision. It does not state even why it disagrees with the decision, let alone the specific

grounds of appeal.

7. The Respondent moves this honorable Board to dismiss the Petition without prejudice. Granting such a motion will allow an amended petition compliant with Section 105.408 to be filed, thereby providing the Respondent with fair notice of the basis for the Petitioner's action.

WHEREFORE, the Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, moves this honorable Board to dismiss the Petitioner's Petition for Review And Hearing/Appeal without prejudice.

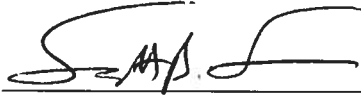
Dated: May 6, 2013

Scott B. Sievers  
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1021 North Grand Avenue East  
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Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,

Respondent,

BY:   
\_\_\_\_\_  
Scott B. Sievers  
Special Assistant Attorney General

Jay Bell's 66 v. Illinois Environmental Protection Agency  
Pollution Control Board No. 13-54

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MAY 08 2013

STATE OF ILLINOIS  
Pollution Control Board

CERTIFICATE OF SERVICE

Scott B. Sievers, Special Assistant Attorney General, herein certifies that he has served a copy of the foregoing **MOTION TO DISMISS** upon:

John T. Therriault  
Assistant Clerk  
Illinois Pollution Control Board  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601-3218

Robert M. Riffle  
Elias, Meginnes, Riffle  
& Seghetti, P.C.  
416 Main Street, Suite 1400  
Peoria, IL 61602

Carol Webb  
Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
P.O. Box 19274  
Springfield, IL 62794-9274

by mailing true copies thereof to the addresses referred to above in envelopes duly addressed bearing proper first class postage and deposited in the United States mail at Springfield, Illinois, on May 6, 2013.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,

Dated: May 6, 2013

Scott B. Sievers  
Attorney Registration No. 6275924  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
(217) 782-5544

Respondent,

BY:



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Special Assistant Attorney General