

ILLINOIS POLLUTION CONTROL BOARD
August 11, 2022

EMCO CHEMICAL DISTRIBUTORS, INC.,)
an Illinois corporation,)
)
Petitioner,)
) PCB 23-16
v.) (UST Appeal)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by A. Palivos):

On July 19, 2022, the Board received a letter sent on behalf of Emco Chemical Distributors, Inc. (Emco) by EPS Environmental Services, Inc. (EPS) asking the Board to review a June 16, 2022 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2020); 35 Ill. Adm. Code 101.300(b), 105.402, 105.404. The Agency's determination concerns Emco's leaking underground storage tank (UST) site located at 2525 Greenfield Lane in North Chicago, Lake County. For the reasons below, the Board accepts EPS' letter as a timely-filed petition but directs Emco to file an amended petition correcting specified deficiencies within 30 days or face dismissal of this appeal.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2020)), 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 (2020); 35 Ill. Adm. Code 105.Subpart D. In this case, the Agency denied Emco's corrective action completion report due to the continued presence of groundwater in the excavation requiring a Stage 1 groundwater investigation at the UST site. Emco appeals on the grounds that a groundwater investigation is not required because the water removed from the UST site was not true groundwater, but rather runoff from adjacent building downspouts after persistent rain events and a leaking water line near the excavation site.

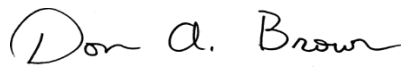
The Board accepts the letter from EPS as a timely-filed petition but finds it deficient for two reasons. First, in adjudicatory proceedings before the Board, including this UST appeal, anyone other than an individual must be represented by an attorney licensed and registered to practice law. 35 Ill. Adm. Code 101.400(a)(2). EPS' letter was signed by Nicholas J. Cuzzone, P.E., Senior Project Manager for EPS. Mr. Cuzzone did not file an appearance, and his letter does not indicate that he is an attorney.

Second, the letter does not include the required notice of filing or documentation of service. *See* 35 Ill. Adm. Code 101.302(b)(3), 101.302(f), 101.304(b)-(d). EPS' letter to the Board does not indicate that a copy of the letter was served upon the Agency.

By September 12, 2022, which is the business day after 30th day after the date of this order, Emco must file with the Board an amended petition for review remedying the deficiencies specified above accompanied by the appearance of an attorney. *See* Ill. Adm. Code 101.400(a)(4). Failure to do so will subject this appeal to dismissal. Timely filing an amended petition will re-start the Board's statutory 120-day deadline to decide this appeal, as well as the Agency's 30-day period to file the record of its determination. 35 Ill. Adm. Code 101.308(a), 105.114(b), 105.116, 105.410. Emco must also serve a copy of the amended petition on the Agency. *See* Ill. Adm. Code 101.304(b).

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 11, 2022, by a vote of 5-0.



Don A. Brown, Clerk
Illinois Pollution Control Board