

ILLINOIS POLLUTION CONTROL BOARD  
February 7, 2008

ESTATE OF WILLIAM EGGERT,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 08-35
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by A.S. Moore):

On January 17, 2008, the Illinois Environmental Protection Agency (Agency) filed a motion to dismiss this underground storage tank (UST) appeal. For the reasons stated below, the Board today grants the motion, dismisses the appeal, and closes the docket.

**PROCEDURAL HISTORY**

On November 15, 2007, the Estate of William Eggert (the Estate) filed a petition (Pet.) for review of an October 10, 2007 determination of the Agency. On November 19, 2007, the Estate filed a copy of the Agency's determination.

In an order dated December 6, 2007, the Board accepted the petition as timely filed but directed the Estate to file an amended petition curing two specified deficiencies by January 7, 2008. The Board's order stated that the petition did not state the grounds for the appeal and did not clearly indicate that an attorney had filed it, both of which the Board's procedural rules require.

On January 17, 2008, the Agency filed a motion to dismiss (Mot.). The Estate has filed no response to that motion.

**AGENCY MOTION TO DISMISS**

The Agency states that the Estate's petition was filed on November 15, 2007, by Kara Magyar, a project assistant with Gabriel Environmental Services. Mot. at 1; *see* Pet. at 1. The Agency claims that the Web site for the Attorney Registration and Disciplinary Commission does not list Ms. Magyar as a registered attorney. Mot. at 1. The Agency argues that an attorney is required to file the Estate's petition for review. *Id.*, citing 35 Ill. Adm. Code 101.400(a)(2). The Agency claims that, because the Estate has previously filed an appeal in which an attorney represented it, it is aware of this requirement. Mot. at 1, citing Estate of William Eggert v. IEPA, PCB 07-22 (petition for review filed Oct. 5, 2006). The Agency states that, as of the date it filed its motion to dismiss, the Estate had not filed an amended petition as directed by the Board in its

order of December 6, 2007. Mot. at 1. The Agency requests that the Board grant its motion and dismiss this action. Mot. at 1, 2.

### **BOARD DISCUSSION**

In its December 6, 2007 order directing the Estate to file an amended petition curing specified deficiencies, the Board clearly stated that failure to do so by January 7, 2008, would subject this appeal to dismissal. The Board has not received from the Estate an amended petition that either states the grounds for the appeal or includes the appearance of an attorney. *See* 35 Ill. Adm. Code 101.400(a)(2), 105.408(c).

In addition, the Board's procedural rules provide that, "[w]ithin 14 days after service of a motion, a party may file a response to the motion. If no response is filed, a party will be deemed to have waived objection to the granting of the motion, but the waiver of objection does not bind the Board or the hearing officer in its disposition of the motion." 35 Ill. Adm. Code 101.500(d). The Estate has not filed a response to the Agency's motion to dismiss and is deemed to have waived objection to the granting of that motion.

As the Estate has not filed an amended petition as directed by the Board and has failed to respond to the Agency's motion to dismiss, the Board grants the Agency's motion, dismisses this appeal, and closes the docket.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on February 7, 2008, by a vote of 4-0.



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John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board