

ILLINOIS POLLUTION CONTROL BOARD

June 5, 1997

GIBSON SERVICE STATION,)	
)	
Petitioner,)	
)	PCB 97-198
v.)	(UST - Appeal
)	90-Day Extension)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by C.A. Manning):

On April 3, 1997 the Illinois Environmental Protection Agency (Agency) issued a final decision, denying Gibson Service Station's (petitioner) physical soil and classification and groundwater plan (plan) under the Leaking Underground Storage Tank Program (see 415 ILCS 5/57.7 (Supp. 1997)). Attached to the decision was a document containing the stated reasons for the denial.

An appeal contesting the validity of the Agency's determination could have been brought to the Board within 35 days after the Agency's final determination. (See 415 ILCS 5/57.7(c)(4)(D) (Supp. 1997); 415 ILCS 415 ILCS 5/40(a)(1) (Supp. 1997); 35 Ill. Adm. Code 732.502(f).) The 35-day appeal period could have, however, been 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) (Supp. 1997).) Thus, any complete notice was due to be filed with the Board or postmarked no later than May 8, 1997, 35 days after the Agency's final determination.

By a letter dated May 3, 1997 petitioner requested that the Agency grant a 90-day extension of the 35-day appeal period. A copy of this letter was received by the Board on May 9, 1997. The Agency subsequently denied the request for an extension by letter dated May 12, 1997, as amended by a letter dated May 15, 1997. These letters were received by the Board on May 13, 1997 and May 15, 1997 respectively. The ground for the denial of the extension was that the request was not timely filed with the Agency.

Because the Agency did not concur in the request for an extension, the statutory conditions for the extension have not been met. Accordingly, the Board cannot grant a 90-day extension of the 35-day appeal period in which to file an appeal pursuant to Section 40(a)(1). The Board can, however, construe petitioner's letter requesting an extension of the 35-day time period as a petition for review so that petitioner will not lose its right to file an appeal of the Agency's determination. (See, *e.g.*, Southern Food Park, Inc. v. Illinois Environmental Protection Agency (August 3, 1995), PCB 96-15, slip op. at 1; Alloy Casting & Engineering

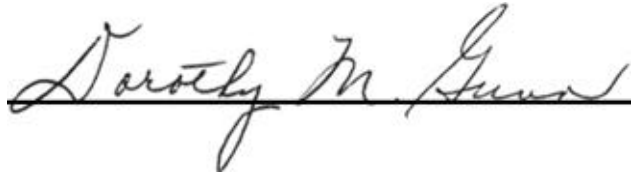
Co. v. Illinois Environmental Protection Agency (August 3, 1995), PCB 96-8, slip op. at 1; Stone Container Corp. v. Illinois Environmental Protection Agency (August 3, 1995), PCB 96-4, slip op. at 1.) Moreover, the Board believes that this is an appropriate course of action because attached to the letter was the Agency's letter denying the plan and a document containing the stated reasons for the Agency's denial.

Petitioner's request, construed as a petition for review, however, does not identify when it was sent to the Board, nor is it sufficient under the Board's rules (see 35 Ill. Adm. Code 101.103, 105.102(a)). The Board will therefore give petitioner ten days to file an amended petition for review and proof of when the request was sent to the Board. If the petitioner does not file an amended petition for review within this time period, or if no proof of service is provided or the proof of service indicates that the request for extension was untimely, this matter will be dismissed, and the docket closed.

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, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 5th day of June 1997, by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board