

ILLINOIS POLLUTION CONTROL BOARD

July 10, 1997

GIBSON SERVICE STATION,	)	
	)	
Petitioner,	)	
	)	PCB 97-198
v.	)	(UST - Appeal)
	)	
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 416 ILCS 5/57.7 (1996)). 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) (1996); 415 ILCS 5/40(a)(1) (1996); 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) (1996). 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 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. 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 Board entered an order on June 5, 1997, stating that the statutory conditions for the extension had not been met. See Gibson Service Station v. IEPA (June 5, 1997), PCB 97-198, slip op. at 1. Accordingly, the Board could not grant a 90-day extension of the 35-day appeal period in which to file an appeal pursuant to Section 40(a)(1) of the Environmental Protection Act. 415 ILCS 5/40(a)(1) (1996). The Board did, however, construe petitioner's letter requesting an extension of the 35-day time period as a petition for review so that petitioner would not lose its

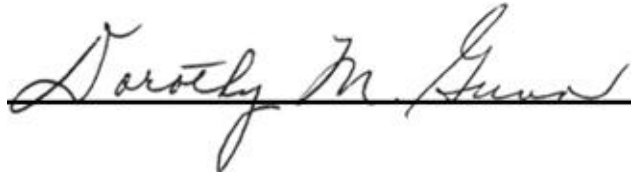
right to file an appeal of the Agency's determination. Gibson ( June 5, 1997), PCB 97-198, slip op. at 1. The Board gave petitioner 10 days to file an amended petition. The Board further stated that if no amended petition was filed within this timeframe that the matter would be dismissed and the docket closed.

To date, petitioner has not filed an amended petition or any other filing with the Board within 10 days of the Board's June 5, 1997, order. Therefore, the Board dismisses this matter and closes the docket.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1996)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of service of this order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 145 Ill. 2d R. 335; see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 10<sup>th</sup> day of July 1997, by a vote of 6-0.

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

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board