

ILLINOIS POLLUTION CONTROL BOARD
June 1, 1995

SPRAYLAT CORPORATION,)
)
 Petitioner,)
) PCB 94-312
 v.) (UST FUND)
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

OPINION AND ORDER OF THE BOARD (by E. Dunham):

This matter comes before the Board on "Petitioner's Motion to Dismiss with Leave to Refile" filed on May 19, 1995. Petitioner moves to dismiss the petition with leave to refile if respondent fails to fulfill the conditions of the settlement agreed to by the parties. Pursuant to the agreement, respondent is to issue a voucher to the petitioner in the amount of \$56,870.00.

The Board cannot grant petitioner the right to refile its petition for review since appeals can only be filed within 35 days of the Illinois Environmental Protection Agency's (Agency) determination, so that any attempt to reopen this case would be jurisdictionally barred. (See Metropolitan Airport Authority of Rock Island v. Office of State Fire Marshal (March 31, 1994), PCB 94-45.) However, the Board believes that petitioner would be able to pursue additional action in this matter to enforce the settlement.

The Board will grant the motion to dismiss and directs the parties to effectuate their agreement. The Board will incorporate the letters of May 5, 1995 and May 10, 1995 between the parties expressing the terms of the settlement. In the event that petitioner fails to fulfill the provisions of the settlement, petitioner may elect to file a new action against respondent for failure to obey a Board order or seek enforcement of this Board order in the appropriate circuit court.

In the event that the parties believe that this order does not effectuate the intent of the parties, the parties may elect to file a motion for reconsideration with the Board.

This opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

1. The Board hereby accepts the agreement of the parties as delineated in the Agency's letter of May 5, 1995 offering

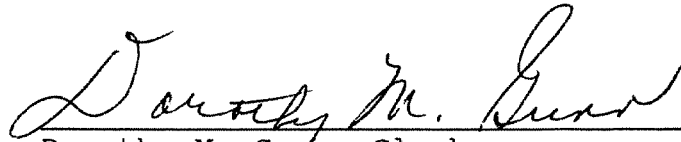
final settlement of this UST fund case, and ratified by Petitioner by letter dated May 10, 1995.

2. The Board orders that the Agency cause to be issued funds in the amount of \$56,870.00 to Petitioner, as agreed between the parties.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act, (415 ILCS 5/41 (1992)), provides for appeal of final orders of the Board within 35 days of the date of service of this order. The Rules of the Supreme Court of Illinois establish filing requirements. (See also 35 Ill. Adm. Code 101.246, Motion for Reconsideration.)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 1st day of June, 1995, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board