

ILLINOIS POLLUTION CONTROL BOARD
January 6, 1994

NU-TECSYS CORP.,)
)
Petitioner,)
)
v.) PCB 93-264
) (UST Fund)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by R. C. Flemal):

On December 30, 1993, the Board received this petition for review of an Agency Underground Storage Tank (UST) Fund determination. The Board notes, however, that the envelope in which the petition was received bears a December 1, 1993 postmark. Pursuant to 35 Ill. Adm. Code 101.102(d), the petitioner must also provide proof of mailing, such as an affidavit, as outlined in 35 Ill. Adm. Code 101.143.

The Board finds the petition deficient. Although petitioner has attached an invoice voucher, and an "Attachment A" to that voucher, the Board is accustomed to reviewing an Agency letter setting forth its decision, not simply a voucher. Petitioner is directed to provide any additional correspondence received from the Agency, setting forth the challenged decision. (If petitioner already has submitted all correspondence, the amended petition should so state.)

Additionally, the Board questions whether this appeal is timely. The second page of the Agency's "Attachment A" states that an appeal may be brought within "35 calendar days from the date the Comptroller mails the accompanying check to file a petition for a hearing with the Board", and cites Section 105.102(a)(2) of the Board's procedural rules. However, that section provides that an appeal shall be filed "within 35 days of the date of mailing of the Agency's final decision". (35 Ill. Adm. Code 105.102(a)(2).) Petitioner shall address the issue of whether this appeal is timely pursuant to the Environmental Protection Act and the Board's rules. The Agency is also directed to address that issue.

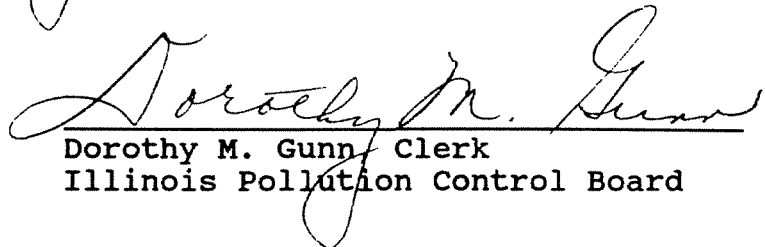
More specifically, it is unclear from the materials submitted to the Board as to what the exact date is of the Agency determination which Nu-Tecsyst seeks to appeal. Petitioner has submitted an Agency invoice voucher which bears, on line 4, a typed voucher date of 10/14/93. On line 8 appears an invoice

date which is handwritten and not completely legible which could be 10/17/93 or 11/17/93. The dates contained in item 26 are also handwritten and not entirely legible. Attachment A to the Invoice, which refers to the 35 day appeal period provision contained in Section 22.18(b)(g) of the Act,¹ does not appear to be dated.

Petitioner shall provide its response within 30 days of the date of this order. Failure to do so will subject this petition to dismissal. Petitioner's response will be construed as an amended petition, and the decision deadline will be calculated from the date of filing of that amended petition. The Agency's response to the issue of timeliness is due within 45 days of the date of this order.

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 6th day of January, 1994, by a vote of 7-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board

¹ The Board notes that P. A. 88-496 repealed Section 22.18b of the Act. The provision is now located at Section 57.8(i) of the Act.