

ILLINOIS POLLUTION CONTROL BOARD  
August 5, 1993

DUPAGE ENTERPRISES, INC.,            )  
  )  
    Petitioner,                        )  
  )  
v.                                        )            PCB 93-143  
  )            (UST Fund)  
ILLINOIS ENVIRONMENTAL                )  
PROTECTION AGENCY,                    )  
  )  
    Respondent.                        )

ORDER OF THE BOARD (by J. Theodore Meyer):

On July 28, 1993 petitioner DuPage Enterprises, Inc. (DuPage) filed a petition for review of an Underground Storage Tank reimbursement determination. DuPage seeks review of the Illinois Environmental Protection Agency's (Agency) June 21, 1993 decision denying reimbursement of some costs.

Sections 22.18b(g) and 40 of the Environmental Protection Act provide that an applicant may seek review of an Agency reimbursement determination by filing a petition with the Board within 35 days. (415 ILCS 5/22.18b(g), 40 (1992).) Section 105.102(a)(2) of the Board's procedural rules state that such a petition 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).) That requirement is noted in the Agency's letter. This petition was filed with the Board, and mailed to the Agency, on July 28, 1993. July 28 is 37 days after the presumed date of mailing of the Agency's decision--June 21, 1993.

As the Board has noted in earlier cases, the 35-day limit is jurisdictional; thus, failure to file a petition for review within that time period will result in dismissal. (Pierce & Stevens Corp. v. Illinois Environmental Protection Agency (July 11, 1991), PCB 91-100, citing Johnson v. State Employees Retirement System (1st Dist. 1987), 155 Ill. App. 3d 616, 508 N.E.2d 351; Calvary Temple Church v. Illinois Environmental Protection Agency (April 25, 1991), PCB 90-3.) As noted above, the instant petition was date-stamped by the Clerk of the Board on July 28, 1993. Although the Board's procedural rules do establish a "mailbox rule" for petitions which are received after a due date (35 Ill. Adm. Code 101.102(d), 101.143(a)(1)), nothing in this petition suggests that it was mailed. The proof of service simply states that the petition was served on the Agency by U.S. mail on July 28, 1993.

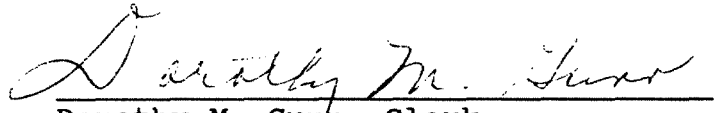
Based on the above, the Board finds that the petition for review is untimely filed. The petition for review was filed on July 28, 1993, which is 37 days after the presumed date of

mailing of the Agency letter. Thus, the petition is dismissed, and the docket is closed. This action is consistent with the Board's prior decisions on this issue. (B & W Cartage Co., Inc. v. Illinois Environmental Protection Agency (January 9, 1992), PCB 91-245; Ferrari v. Illinois Environmental Protection Agency (January 23, 1992), PCB 91-242; Indian Refining Limited Partnership v. Illinois Environmental Protection Agency (July 25, 1991 and September 26, 1991), PCB 91-110; Finks & Austman v. Illinois Environmental Protection Agency (February 7, 1991), PCB 90-243.)

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1992)) provides for the appeal of final Board orders. The Rules of the Supreme Court of Illinois establish filing requirements. (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 5<sup>th</sup> day of August, 1993, by a vote of 6-0.

  
 Dorothy M. Gunn, Clerk  
 Illinois Pollution Control Board