

ILLINOIS POLLUTION CONTROL BOARD
April 22, 1993

SMITH OIL COMPANY OF KANKAKEE,)
)
Petitioner,)
)
v.) PCB 91-243
) (UST Fund)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by G. T. Girard):

On March 30, 1993, the Board received a motion for judgement by default filed by petitioner, Smith Oil Company of Kankakee (Smith Oil). On April 12, 1993, the Board received a response from the Agency.

Smith Oil asks that the Board enter judgement in its favor on the pleadings filed in this cause. Smith states that on July 30, 1992, the Board reversed an Agency determination that Smith Oil was not eligible to receive reimbursement from the fund. Smith Oil further points out that on November 19, 1992, the Board granted a motion to compel filed by Smith Oil and directed the Agency to make the determination of deductible and the reasonableness of costs no later than January 15, 1993. As of the date of the filing of the motion for judgement by default, the Agency has failed to make the determination of deductible and the reasonableness of costs, according to petitioner.

The Agency's response indicates that following the Board's final order of July 30, 1992, the Agency placed Smith Oil in the "queue for eligibility and deductible review". (Ag.Resp. at 1.) Further, the Agency indicates that it did not receive confirmation from the Office of State Fire Marshall that the tanks at issue in this appeal were properly registered until February 9, 1993. (Ag.Resp. at 2.) Therefore, according to the Agency it was unable to make a determination by January 15, 1993, as directed by the Board. However, upon receiving the notification that the tanks were properly registered, the Agency proceeded with its reimbursement review. On February 19, 1993, the petitioner was mailed a letter indicating that the deductible to be applied to Smith Oil was \$10,000. (Ag.Resp. at 2.)

The Agency also questions the appropriateness of the filing of a motion for default judgement in a proceeding in which the docket has been closed.

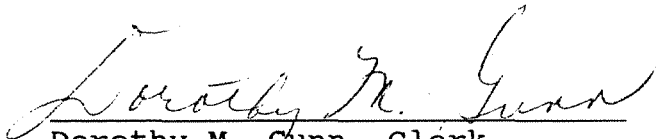
Before ruling on this specific motion the Board notes that a motion for default in this instance is appropriate. The petitioner has already been granted a motion to compel, which the

Agency did not respond to. Thus, this motion would appear to be a logical next step. Further, had the Agency responded to the motion to compel with some of the information included in this response, the Board might have extended the timeframes in its order granting the motion to compel.

The Board finds that the Agency is proceeding and denies the motion for judgement by default.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do hereby certify that the above order was adopted on the 22nd day of April, 1993, by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board