

ILLINOIS POLLUTION CONTROL BOARD
January 9, 1992

B & W CARTAGE COMPANY, INC.,)
)
 Petitioner,)
)
 v.) PCB 91-245
) (Underground Storage Tank Fund
) Reimbursement Determination)
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
)
 Respondent.)

ORDER OF THE BOARD (by B. Forcade):

On December 12, 1991 B & W Cartage filed this appeal of an October 14, 1991 Agency underground storage tank fund reimbursement determination. On December 24, 1991 the Agency filed a motion to dismiss this appeal as untimely filed. B & W filed a response to the motion on December 31, 1991.

For the reasons outlined below, the Agency's motion to dismiss this action as untimely filed is hereby granted.

As the Agency correctly notes, the statutory basis for commencement of this action is Section 22.18b(g) of the Act which provides for appeals of Agency Underground Storage Tank (UST) Fund Reimbursement determinations "in the manner provided for the review of permit decisions in Section 40"; Section 40 states in pertinent that "the applicant may, within 35 days, petition for a hearing". Ill. Rev. Stat., ch. 111 1/2, pars. 22.18b(g) and 40(a)(1). It is undisputed that the Agency made its UST determination in a letter dated October 14, 1991 addressed to Mr. Ralph Coughlin. The Agency determined that B&W was eligible to seek reimbursement for corrective action costs in excess of \$10,000, but that costs associated with 5 unregistered tanks were not eligible. This letter, mailed October 16, 1991, clearly stated that:

This constitutes the Agency's final decision as it relates to your eligibility and deductible amounts. An underground storage tank owner or operator may appeal this decision to the Illinois Pollution Control Board (Board) pursuant to Ill. Rev. Stat. 1989, Chap. 111 1/2, Para. 1022.18B(g) and 1040. An owner or operator who seeks to appeal the Agency decision shall file a petition for a hearing before the Board within 35 days of the date of mailing of the Agency's final decision

(35 Ill. Adm. Code 105.102(a)(2)).

Any appeal of this decision was accordingly due to be filed with the Board on or before November 20, 1991. No such appeal was filed until December 12.

In its motion to dismiss, the Agency argues that this appeal is time-barred. The Agency notes that:

It is well settled that a party seeking review of an administrative decision must act within the time allotted by the particular statute. An identical time period of thirty-five days is provided for the commencement of actions under Section 3-103 of the Administrative Review Act. The case law is clear that this limit is a jurisdictional requirement and cannot be waived. See e.g., Fredman Brothers Furniture Co., Inc. v. Illinois Department of Revenue, 129 Ill. App. 3d 38, 471 N.E. 2d 1037, (1984); Matter of Crotty, 115 Ill. App. 3d 248, 450 N.E. 2d 399, (1983); Robinson v. Regional Board of School Trustees, Randolph County, 130 Ill. App. 3d 509, 474 N.E. 2d 1356, (1985).

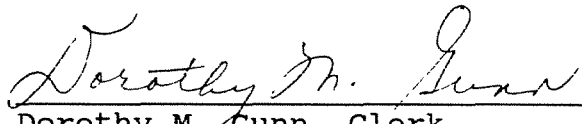
In response, B & W asserts that the Agency's "letter was sent to the wrong address, causing a two week delay in receipt of the decision". The letter was directed to B & W at the address from which the USTs were removed, and B & W states that the USTs were removed because the company was closing its Chicago operation. B&W does not state whether or when it had notified the Agency of a change of address.

The Agency's October 14 letter made it very clear that the Act and the Board's rules specify that an appeal must be filed within 35 days of the date of the mailing of the Agency letter, and not the date of its receipt.

Under these circumstances, the Board has no choice but to dismiss the petition as untimely filed.

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 9th day of January, 1992, by a vote of 6-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board