

ILLINOIS POLLUTION CONTROL BOARD  
October 10, 1991

CLINTON COUNTY OIL COMPANY, )  
INC., HOFFMAN/MEIER'S SHELL )  
AND CLARENCE MEIER, )  
 )  
Petitioner, )  
 )  
v. ) PCB 91-163  
 ) (Underground Storage Tank Fund  
 ) Reimbursement Determination)  
 )  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

ORDER OF THE BOARD (by J. C. Marlin):

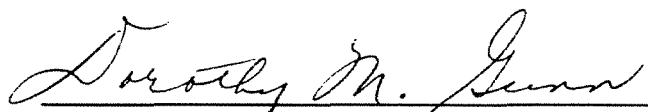
This matter is before the Board on the Illinois Environmental Protection Agency's ("Agency") Motion to Dismiss filed September 18, 1991. The petitioner Clinton County Oil did not file a response.

The Agency requests the Board to dismiss this case for petitioner's failure to meet the 35 day period allowed for appeal. 35 Ill. Adm. Code 105.102(a)(2). The Agency's motion states that the letter requesting review of the Agency's decision was sent to the Board and dated August 30, 1991. The Agency's letter denying petitioner access to the fund was dated August 1, 1991 and mailed August 5, 1991. The Agency received a copy of the petition on September 10, 1991. On that date the Board also received and date-stamped the petitioner's filing requesting review. The Agency argues that since the petition was not filed within 35 days following the date of the mailing of the Agency's final decision, the petition is untimely. The Agency argues that the period for appeal expired September 9, 1991.

The Agency is correct that 35 days from the date of mailing of the Agency's final decision is September 9, 1991, one day after the petition was date-stamped. However, according to the Board's procedural rules, the time of filing of documents will be the date on which they are date-stamped by the Clerk, unless date-stamped after any due date. If received after any due date, the time of mailing shall be the time of filing. 35 Ill. Adm. Code 101.102(d). Because the petition was date-stamped on September 10, 1991, it could have been mailed no earlier than September 9, 1991. As September 9, 1991 is within 35 days of the mailing of the Agency's decision, the petition is timely. Therefore, the motion is denied.

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 10<sup>th</sup> day of October, 1991 by a vote of 6-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board