

ILLINOIS POLLUTION CONTROL BOARD

August 24, 2000

GENERAL MOTORS	)	
CORPORATION,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 01-14
	)	(UST - Appeal)
OFFICE OF THE STATE FIRE	)	
MARSHAL,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by S.T. Lawton, Jr.):

General Motors Corporation (GMC) petitioned the Board to review a decision of the Office of the State Fire Marshal (OSFM). The petition alleges that the OSFM incorrectly found GMC ineligible for reimbursement from the Underground Storage Tank Fund regarding a facility located at 560 Bessie Coleman Drive in Chicago, Cook County, Illinois. In this order, the Board addresses the sufficiency of GMC’s petition and rules on the motion of GMC’s counsel to appear *pro hac vice*.

Under Section 107.121 of the Board’s procedural rules, petitioners must file their petitions for review with the Board within 35 days after the date of the OSFM’s “Eligibility and Deductibility Final Determination” letter. See 35 Ill. Adm. Code 107.121. The OSFM’s letter in this matter is dated June 13, 2000. Thirty-five days after June 13, 2000, is July 18, 2000. GMC mailed its petition for review on July 21, 2000, and the Board received the petition on July 25, 2000. GMC did not file the petition by July 18, 2000, 35 days after the date of the OSFM’s letter.

There is a rebuttable presumption that a petitioner receives the “Eligibility and Deductibility Final Determination” letter four days from the date indicated on the letter. See 35 Ill. Adm. Code 107.121. GMC includes a copy of the OSFM letter with a handwritten note that states it was postmarked on June 21, 2000. GMC states that it received the letter on June 22, 2000, nine days after the date of the OSFM’s letter. If GMC received the letter on that date, then the petition could still be timely under 35 Ill. Adm. Code 107.121.

Under 35 Ill. Adm. Code 107.122(f), GMC must document in its petition that it timely filed the petition with the Board. GMC has failed to do so. GMC must present stronger evidence, such as an affidavit and postmarked envelope, to rebut the presumption in Section 107.121 that it received the OSFM’s letter four days from the date of the letter.

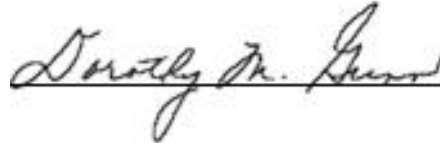
GMC must also request a location to hold hearing. See 35 Ill. Adm. Code 107.122(g). GMC never requested a hearing location in its petition for review.

GMC must address the petition's timeliness and request a hearing location. The Board directs GMC to file an amended petition for review to address these informational insufficiencies, at which point the Board will determine whether to accept this matter for hearing. GMC must file the amended petition within 30 days of the date of this order or the Board will dismiss this matter.

Lastly, the petition for review was accompanied by a motion to allow an out-of-state attorney to appear *pro hac vice* on behalf of GMC. Section 101.107(b) of the Board's procedural rules states that "[a]ttorneys not licensed and registered to practice in the State of Illinois may request to appear on a particular matter on motion filed with the Board." 35 Ill. Adm. Code 101.107(b). Attorney Louis M. Stefano requests that he be allowed to appear before the Board on behalf of GMC. Stefano states that he is licensed to practice law in the State of New Jersey, that he is in good standing, and that his law firm, Carpenter, Bennett & Morrissey, has represented GMC in matters similar to this one. The Board grants the motion to appear *pro hac vice*.

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 24th day of August 2000 by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board