

ILLINOIS POLLUTION CONTROL BOARD
May 6, 1999

DEWEY'S SERVICE, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 99-107
)	(UST - Reimbursement)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by C.A. Manning):

This matter is before the Board on a March 17, 1999 motion for reconsideration (motion) filed by the petitioner, Dewey's Service, Inc. (Dewey). Dewey seeks reconsideration of the Board's February 4, 1999 order dismissing this appeal as untimely filed. No response was filed by the Illinois Environmental Protection Agency (Agency).

In the motion, Dewey maintains that the January 27, 1999¹ petition for appeal from the December 21, 1998² Agency decision was timely filed. Dewey argues that the Agency's reimbursement letter requires an owner or operator seeking appeal of the Agency's decision to petition for hearing with the Board 35 days after notification of the final Agency decision. Dewey asserts that the time for appeal should run from the date of its receipt of the Agency letter. Alternatively, Dewey requests that the Board deem its petition to have been a timely request for extension of its appeal period pursuant to Section 40 of the Environmental Protection Act (Act) 415 ILCS 5/40(a)(1) (1996)).

In ruling upon a motion for reconsideration filed pursuant to 35 Ill. Adm. Code 101.246 and 101.300, the Board will consider "factors including, but not limited to, error in the previous decision and facts in the record which are overlooked." 35 Ill. Adm. Code 101.246(d). In Citizens Against Regional Landfill v. County Board of Whiteside County (March 11, 1993), PCB 93-156, the Board stated that "[t]he intended purpose of a motion for reconsideration is to bring to the court's attention newly-discovered evidence which was not available at the time of the hearing, changes in the law, or errors in the court's previous

¹ Dewey maintains that the petition for appeal was filed on January 27, 1999; however, in its order of February 4, 1999, the Board found that the petition for appeal was deemed filed on January 26, 1999. See Dewey's Service, Inc. v. IEPA (February 4, 1999), PCB 99-107, slip op. at 1.

² In the motion for reconsideration, Dewey asserts that the Agency issued its decision on December 22, 1998; however, a review of the decision letter confirms that the Agency issued the decision on December 21, 1998.

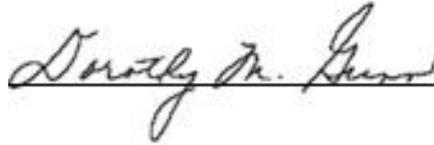
application of the existing law.” Korogluyan v. Chicago Title & Trust Co., 213 Ill. App. 3d 622, 572 N.E.2d 1154 (1st Dist. 1992).

The Board denies Dewey’s motion for reconsideration of the Board’s February 4, 1999 order. Dewey has not presented any newly-discovered evidence, a change in the law, or any other reason for the Board to conclude that its decision was in error. As to Dewey’s request that the time for appeal ran from the receipt date of its certificate of service, the Board’s procedural rules and Board case law interpret Section 40(a) of the Act (415 ILCS 5/40(a)(1) (1996)) to require that an appeal of a permit denial be filed within 35 days of mailing of the Agency’s decision. See 35 Ill. Adm. Code 105.102(a)(2); James River Paper Co. v. IEPA (March 31, 1994), PCB 92-112. As the Board stated in its February 4, 1999 order, the petition for appeal was postmarked January 26, 1999, and was accordingly deemed filed on the same date, one day after the expiration of the 35-day appeal period. See 35 Ill. Adm. Code 101.102(a). Accordingly, the Board does not have jurisdiction to hear this matter.

As to Dewey’s alternative request that this be considered a request for extension of the appeal time under Section 40(a)(1), that Section provides that “. . . written notice [is] provided to the Board from the applicant and the Agency within the initial appeal period.” 415 ILCS 5/40(a)(1) (1996). Dewey’s filing here was one day late and was not joined by the Agency. As previously held by the Board, this action is dismissed.

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 6th day of May 1999 by a vote of 6-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board