

ILLINOIS POLLUTION CONTROL BOARD  
December 1, 1994

|                         |   |            |
|-------------------------|---|------------|
| MONTGOMERY WARD & CO.,  | ) |            |
| INCORPORATED,           | ) |            |
|                         | ) |            |
| Petitioner,             | ) |            |
|                         | ) |            |
| v.                      | ) | PCB 94-289 |
|                         | ) | (UST Fund) |
| ILLINOIS ENVIRONMENTAL, | ) |            |
| PROTECTION AGENCY,      | ) |            |
|                         | ) |            |
| Respondent.             | ) |            |

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

On October 11, 1994, Montgomery Ward & Co., Incorporated (Montgomery Ward) filed by personal delivery a petition for review of an Illinois Environmental Protection Agency (Agency) final reimbursement determination from the Underground Storage Tank Fund. The Board on October 20, 1994 dismissed this matter for lack of jurisdiction, finding that Montgomery Ward failed to appeal the Agency determination within the 35-day statutory period to appeal pursuant to Section 40 of the Environmental Protection Act (Act). (415 ILCS 5/40 (1992).) On November 9, 1994 Montgomery Ward filed a motion for reconsideration of that order.

Currently the Agency issues a State Voucher and an "Attachment A" which contains the stated reasons for deductions as its final determination letter. The State Voucher states that "[f]or the purposes of appeal, this voucher constitutes the Agency's final decision as of the date the check was issued by the Comptroller." Thus, following the statement made on the State Voucher the issuance date of the Comptroller's reimbursement check is the date of the Agency decision, which was Friday September 2, 1994. Therefore, pursuant to the Board's procedural rules the 35 day period began on Saturday, September 3, 1994, and ended Friday October 7, 1994.

However, Montgomery Ward points out that the attachment to the State Voucher contains the following language:

The attached invoice constitutes the Agency's final decision on your leaking underground storage tank bill. You may appeal this decision to the Illinois Pollution Control Board (Board) pursuant to Section 22.18(b)(g) and Section 40 of the Illinois Environmental Protection Act. You have 35 Calendar days from the date the Comptroller mails the accompanying check to file a petition for a hearing with the Board ((35 Ill. Adm.

Code 105.102(a)(2)).

Montgomery Ward claims that it contacted the Warrant Distribution Section of the Comptroller's office and ascertained that the check was mailed on September 6, 1994. Following the Board procedural rules the 35-day period began on September 7, 1994 and ended on October 12, 1994 thus making Montgomery Ward's appeal timely.

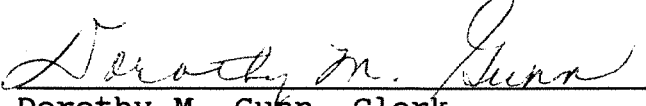
On November 23, 1994 the Agency filed a response to Montgomery Ward's motion for reconsideration. The Agency response reiterates the Board's procedural rules on the computation of time and states that the appeal was untimely. The Agency also points to previous Board decisions where the Board calculated the 35-day period for time to appeal from the date of issuance of the Comptroller's check. However, the Agency does not respond to the conflicting statements made in its final determination letter.

Montgomery Ward failed to supply the Board with an affidavit attesting to the facts alleged, i.e., that the Comptroller mailed the check on September 6, 1994. Therefore, instead of ruling on the motion today, the Board directs Montgomery Ward to file the appropriate affidavit within 21 days from the date of this order together with a waiver of the decision deadline or alternatively a 120-day extension of such deadline. The Board will rule on the motion for reconsideration at our next regularly schedule meeting following timely receipt of the appropriate affidavit.

IT IS SO ORDERED.

Board Member Joseph Yi abstained.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 1<sup>st</sup> day of December, 1994, by a vote of 6-0.

  
 Dorothy M. Gunn, Clerk  
 Illinois Pollution Control Board