

ILLINOIS POLLUTION CONTROL BOARD  
August 3, 1995

SOUTHERN FOOD PARK, INC.,	)	
(CARTERVILLE/HAN-DEE	)	
MART #35),	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 96-15
	)	(UST Fund Ninety-Day
	)	Extension)
	)	
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

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

On July 26, 1995, Southern Food Park, Inc., (Southern) filed a notice of extension of the 35-day appeal period pursuant to Section 40 of the Act, relating to a June 19, 1995 Illinois Environmental Protection Agency (Agency) UST determination. On August 1, 1995, the Agency filed its agreement to the extension.

P.A. 88-690 (SB1724) effective January 24, 1995, amends Section 40(c), which governs the appeal process, to provide:

the 35-day period for petitioning for a hearing may be extended for a period of time not to exceed 90 days by written notice provided to the Board from the applicant and the Agency within the initial appeal period.

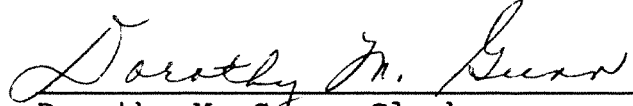
Accordingly, any complete notice was due to be filed or postmarked no later than July 24, 1995. (See 35 Adm. Code 101.102(d) and 101.109.) Although Southern's Notice was postmarked July 21, 1995, the Agency's agreement was not postmarked until July 28, 1995 and therefore under amended Section 40(c), both parties did not file "within the initial appeal period." Because the statutory conditions for the extension have not been met, the Board cannot grant a 90-day extension of the time in which to file a appeal pursuant to Section 40(c).

The Board can however, accept Southern's notice of extension as a petition for review so that Southern will not lose its right to file a appeal as result of the Agency's late-filed notice of extension. Southern's notice, of course, does not constitute a proper petition for review of an Agency UST final determination; Southern could not have anticipated that its notice would be treated as a appeal. In that the Agency's notice was received, albeit late, it is clear the Agency intended that the extension

would be granted; therefore, we will allow 90 days from the date the notice was due, or from July 24, 1995, for Southern to file an amended petition for review. If the amended petition is not filed on or before October 22, 1995, this matter will be dismissed. The 120 statutory period in which the Board must render a final decision will begin running as of the date of the filing of the amended petition. Additionally, a \$75.00 filing fee will be required at such time as Southern files the amended petition.

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 3<sup>rd</sup> day of August, 1995, by a vote of 5-0.

  
\_\_\_\_\_  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board