

ILLINOIS POLLUTION CONTROL BOARD
June 17, 1998

JAKE SEABURY,)
)
Petitioner,)
)
v.) PCB 98-147
) (UST - Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

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

On March 17, 1998, the Illinois Environmental Protection Agency (Agency) issued a final decision, denying Jake Seabury's (petitioner) request for reimbursement from the Underground Storage Tank Fund. By letter dated April 21, 1998, petitioner requested that the Agency grant a 90-day extension of the 35-day appeal period. A copy of this letter was received by the Board on April 23, 1998. The Agency subsequently denied the request for an extension by letter dated April 30, 1998, and received by the Board on June 4, 1998. The grounds for the denial of the extension was that the request, received by the Agency on April 23, 1998, was not timely.

Because the Agency did not concur in the request for an extension, the statutory conditions for the extension have not been met. Accordingly, the Board cannot grant a 90-day extension of the 35-day appeal period in which to file an appeal pursuant to Section 40(a)(1). The Board can, however, construe petitioner's letter requesting an extension of the 35-day time period as a petition for review so that petitioner will not lose its right to file an appeal of the Agency's determination.¹ See, e.g., North Shore Sanitary District v. Illinois Environmental Protection Agency (May 7, 1998), PCB 98-149, slip op. at 1; Gibson Service Station v. Illinois Environmental Protection Agency (June 5, 1997), PCB 97-198, slip op. at 1; Southern Food Park, Inc. v. Illinois Environmental Protection Agency (August 3, 1995), PCB 96-15, slip op. at 1; Alloy Casting & Engineering Co. v. Illinois Environmental Protection Agency (August 3, 1995), PCB 96-8, slip op. at 1; Stone Container Corp. v. Illinois Environmental Protection Agency (August 3, 1995), PCB 96-4, slip op. at 1.

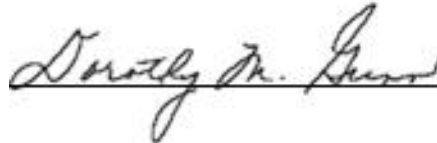
¹ An appeal contesting the validity of the Agency's determination could have been brought to the Board within 35 days after the Agency's final determination. See 415 ILCS 5/57.7(c)(4)(D) (1996); 415 ILCS 415 ILCS 5/40(a)(1) (1996); 35 Ill. Adm. Code 732.502(f). The 35-day appeal period could have, however, been 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." 415 ILCS 5/40(a)(1) (1996). Thus, any complete notice was due to be filed with the Board or postmarked no later than April 21, 1998, 35 days after the Agency's final determination. Petitioner's request was postmarked on April 21, 1998.

Petitioner's request, construed as a petition for review, however, does not identify when it was sent to the Board, nor is it sufficient under the Board's rules (see 35 Ill. Adm. Code 101.103, 105.102(a)). Most importantly, the petition fails to attach a copy of the Agency determination petitioner wishes the Board to review. The Board therefore gives petitioner ten days to file an amended petition for review including a copy of the Agency's determination. If the petitioner does not file an amended petition for review within this time period, including proof of service of the amended petition on the Agency, this matter will be dismissed, and the docket closed.

The 120-day 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 filing fee will be required at such time as petitioner files the amended petition (see 35 Ill. Adm. Code 101.120(b)(3)).

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 17th day of June 1998 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