

ILLINOIS POLLUTION CONTROL BOARD
February 3, 1994

DART CONTAINER CORPORATION,)
)
Petitioner,)
)
v.) PCB 94-47
) (UST Fund)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

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

On January 28, 1994, the Dart Container Corporation ("Dart") filed a petition for review of an Illinois Environmental Protection Agency ("Agency") final UST Fund reimbursement decision. Dart also filed a motion to waive the recycled paper filing requirement. That motion is hereby granted. The Agency issued an invoice voucher on December 13, 1993 accompanied by Attachment A which contains the stated reasons for deductions, and the final reimbursement check was issued by the Comptroller on December 28, 1993.¹ The reimbursement determination concerns Dart's facility located at 310 South Evergreen, North Aurora, Kane County, Illinois. This matter is hereby accepted for hearing.

The hearing must be scheduled and completed in a timely manner, consistent with Board practices and the applicable statutory decision deadline or the waiver provisions of 35 Ill. Adm. Code 101.105. The Chief Hearing Officer shall assign a hearing officer to conduct hearings. The Clerk of the Board shall promptly issue appropriate directions to the assigned hearing officer consistent with this order.

The assigned hearing officer shall inform the Clerk of the Board of the time and location of the hearing at least 40 days in advance of hearing so that public notice may be published. After

¹The Board must state its reservations about the Agency's statement, on its invoice voucher, that "for purposes of appeal, this voucher constitutes the Agency's final decision as of the date the check was issued by the Comptroller." Given the past history of the UST Fund, in which there have been long delays in payment because the UST Fund was exhausted, the Board is concerned by a scenario in which the Agency's obligation to make a final decision, which cannot be amended (see Illinois Environmental Protection Agency v. Pollution Control Board (November 23, 1993), No. 5-92-0468), is extended while the invoice voucher is awaiting payment by the Comptroller. (See also Guether v. IEPA, (February 3, 1994) PCB 93-232.)

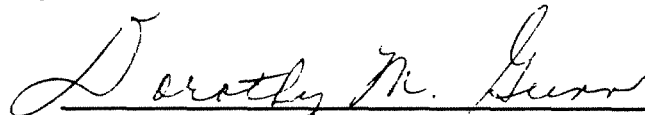
hearing, the hearing officer shall submit an exhibit list, a statement regarding credibility of witnesses and all actual exhibits to the Board within five days of the hearing. Any briefing schedule shall provide for final filings as expeditiously as possible and, in time-limited cases, no later than 30 days prior to the decision due date, which is the final regularly scheduled Board meeting date on or before the statutory or deferred decision deadline. In this case, pursuant to Section 40(a)(2) of the Act, the statutory decision deadline is May 28, 1994; therefore, the decision due date is May 19, 1994.

If after appropriate consultation with the parties, the parties fail to provide an acceptable hearing date or if after attempting to do so, the hearing officer is unable to consult with the parties, the hearing officer shall unilaterally set a hearing date in conformance with the above schedule. The hearing officer and the parties are encouraged to expedite this proceeding to the extent possible.

This order will not appear in the Board's opinion volumes.

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 3rd day of February, 1994, by a vote of 7-0.



 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board