

ILLINOIS POLLUTION CONTROL BOARD
March 3, 1994

5566 BUILDING PARTNERSHIP and)	
BOX FORM, INC.,)	
)	
Petitioners,)	
)	
v.)	PCB 93-29
)	(UST Fund)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

This matter is before the Board pursuant to a petition for review of an Illinois Environmental Protection Agency ("Agency") underground storage tank eligibility determination filed on February 16, 1993 by 5566 Building Partnership and Box Form, Inc. The petition challenges the Agency's final determination of January 14, 1993 as to the petitioners' site located at 5440 North Northwest Highway, Chicago, Cook County, Illinois. Though the Agency made two determinations in its January 14th letter, one denying eligibility to seek corrective action costs associated with a 1,000 gallon gasoline UST and a 2,000 gallon heating oil because they were both out of service in 1976, were not registered, and no registration fees were paid and, the second, applying a deductible of \$100,000 to three eligible USTs (2,000 gallon gasoline, 3,000 gallon heating oil and 1,000 gallon heating oil UST), the petition only seeks reversal of the Agency's eligibility determination to access the UST Fund.

We accepted this case for hearing on February 25, 1993 and on May 27, 1993, Petitioners filed an open waiver of the statutory decision deadline. Since our order of February 25, 1993, no substantive action has taken place in this case. Therefore, on December 16, 1993, and then again on February 3, 1994 after receiving no response, we directed the Petitioners to file a status report indicating the status of any on-going negotiations, whether the parties anticipate reaching settlement in this matter, and if possible, a projected timeline for completion of settlement. In our February 3, 1994 order we indicated that if no status report is filed, this case would be subject to dismissal for want of prosecution.

On February 24, 1994, Petitioners filed a status report which states in its entirety:

1. On February 16, 1993, Petitioner filed a Petition for Review of the Illinois Environmental

Protection Agency's decision to deny eligibility to receive money from the Underground Storage Tank Fund for a 1,000 gallon gasoline tank and a 2,000 gallon heating oil tank. The Agency's decision was announced in its letter of January 14, 1993, a copy of which was attached as Exhibit 6 to the Petition.

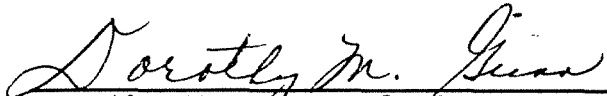
2. On May 3, 1993, the Agency apparently reversed its decision by letter of the same date. A copy of the May 3, 1993 letter is attached hereto as Exhibit 1.

The status report filed by the petitioners is not responsive to our order. It neither indicates the status of this case, nor apprises the Board as to whether the parties are negotiating, or whether they intend upon proceeding to hearing on the eligibility issue referenced in their petition. Moreover, from our review of Exhibit 1, it appears the Agency has not, in fact, reversed its decision on denying eligibility. The Agency's May 3, 1993 letter provides the Agency reversed its "deductibility" determination solely which resulted in a downward adjustment of the \$100,000 deductible to \$15,000. The May 3rd letter does not mention the Agency's January 14th final eligibility determination denying eligibility to access the UST Fund as to the three USTs (2,000 gallon gasoline, 3,000 gallon heating oil and 1,000 gallon heating oil UST).

Accordingly, because the status report was unresponsive, we order that the petitioners show cause why an order dismissing this case should not be entered for lack of prosecution. Petitioners' response should be filed with the Board on or before Thursday, March 24, 1994.

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 March, 1994, by a vote of 6-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board