

ILLINOIS POLLUTION CONTROL BOARD
February 6, 1992

THE PUMPER, INC.,)
)
 Petitioner,)
)
 v.) PCB 91-262
) (Underground Storage Tank Fund
) Reimbursement Determination)
)
 ILLINOIS' ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by J. Anderson):

This matter was initiated on the filing of a letter petitioning review of a December 4, 1991 Illinois Environmental Protection Agency (Agency) underground storage tank (UST) fund reimbursement determination received by the Board on December 30, 1991. In the letter, Mr. Mockus requested that if his correspondence was an insufficient petition, that he be given 30 days in which to file additional material, since he would be out of town between December 28, 1991 and January 12, 1992 and since "we have no control over your working days and holidays that are involved".

Given the fact that the letter was timely received, and given the holiday period, the matter was accepted for hearing by the Board's Order of January 9, 1992.

On January 23, 1992 Mr. Walter Mockus submitted a copy of the Agency's December 4, 1991 letter granting reimbursement of some costs but denying reimbursement of others. This letter was accompanied by the \$75.00 dollars filing fee required by Section 7.5 of the Environmental Protection Act (Act). On January 27, 1992, Mr. Mockus submitted Attachment A to the Agency's December 4, 1991 letter.

The Board first notes that, as is its usual practice, it will construe its 120-day decision deadline pursuant to Section 40(a) of the Act as beginning to run on January 27, 1992, the date on which all materials were received from Mr. Mockus.

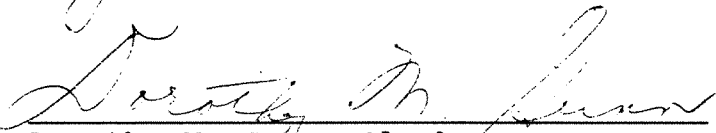
Secondly, review of Mr. Mockus' correspondence indicates some uncertainty as to how he should proceed in bringing this appeal before the Board; hearing is presently scheduled for March 19, 1992. Mr. Mockus should be prepared to explain at hearing which Agency determinations he is challenging and why he is

challenging them, and to provide any documents which he had given to the Agency.

We note that a review of the correspondence filed to date in this matter indicates there may be some confusion as to the nature of a proceeding of this type before the Board. In proceedings before the Board, the burden is upon the petitioner to establish at a formal hearing, by oral testimony under oath or by properly submitted written documents, that the disputed costs should be paid under the terms of the Environmental Protection Act, and applicable regulations. So far, petitioner has not identified the specific cost deductions which seeks to challenge, nor has petitioner asserted reasons why such costs should have been paid. Petitioner must present facts and arguments as to why those costs should be paid in order to prevail. The initial burden at hearing to explain why the costs were not paid is not upon the Agency.

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 6th day of February, 1992 by a vote of 6-6.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board