

ILLINOIS POLLUTION CONTROL BOARD

May 4, 2000

STANDARD BANK & TRUST COMPANY,)
as trustee and DERK BALL, SR.,)
)
Petitioners,)
) PCB 00-174
v.) (UST - Reimbursement)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by R.C. Flegal):

On April 13, 2000, petitioners filed a petition to appeal an Illinois Environmental Protection Agency's (Agency) decision denying petitioners' application for reimbursement from the underground storage tank fund. On April 24, 2000, the Agency filed a motion to dismiss the petition (motion) on the grounds that the petition is untimely filed. On April 26, 2000, petitioners filed a response to the Agency's motion (Resp.). For the reasons expressed below, the Board grants the Agency's motion.

The petitioner seeks to appeal the Agency's March 8, 2000 decision to deny petitioners' petition (Pet.) for reimbursement from the underground storage tank fund. Under Section 57.8(i) of the Environmental Protection Act (Act) (415 ILCS 5/57.8(i)(1998)), denials for reimbursement may be appealed to the Board by following the provisions in Section 40 of the Act (415 ILCS 5/4)(1998). Among other things, Section 40 provides that a petitioner has 35 days to appeal an Agency decision. 415 ILCS 5/40(a)(1) (1998). The Agency issued its decision on March 8, 2000 (Pet. at Exh. G); therefore, the Agency argues that the appeal period expired 35 days later on April 12, 2000, one day prior to the filing of the instant petition. Motion at 2.

Petitioners argue that it was the legislature's intent that the 35-day appeal period should commence when petitioners received the Agency's decision (Resp. at 3) which in this case, was March 10, 2000. Under this scenario, the 35-day appeal period would have expired on April 14, 2000, the day after the instant petition was filed with the Board.

Petitioners cite no authority for their proposition that the legislature intended that the appeal period for actions brought under Section 40 commences with the receipt (rather than the issuance) of the Agency decision. Neither can the Board find any authority.

The Board has previously found that appeals for reimbursement from the underground storage tank fund must be filed within 35 days of the date of the mailing of the Agency letter, and not the date of

the receipt of the letter. B&W Cartage Company, Inc. v. IEPA (January 9, 1992), PCB 91-245; DuPage Enterprises, Inc. v. IEPA (August 5, 1993), PCB 91-245. In the instant case, petitioners concede that the Agency mailed the letter denying reimbursement on March 8, 2000. Resp. at 2.

The Board received the petitioners' petition for appeal on April 13, 2000, and the notice of filing is dated April 13, 2000. Section 101.102(d) of the Board's procedural rules provides, in pertinent part:

The time of filing of documents will be the date on which they are date-stamped by the Clerk, unless date-stamped after any due date. If received after any due date, the time of mailing shall be deemed the time of filing. 35 Ill. Adm. Code 101.102(d).

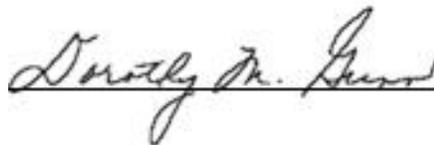
This petition was mailed on April 13, 2000, as the notice of filing indicates. The 35-day appeal period expired on April 12, 2000, which was 35 days after the Agency issued its denial of reimbursement on March 8, 2000. The Board cannot accept this untimely filed petition for appeal. Dewey's Service, Inc. v. IEPA (February 9, 1999), PCB 99-107 (finding that appeal was untimely when mailed one day after the 35-day appeal period expired), citing Indian Refining v. IEPA (July 25, 1991), PCB 91-110 and Pierce and Stevens, Corp. v. IEPA (July 11, 1991), PCB 91-100.

For these reasons, this matter is dismissed and this docket is closed.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1998)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of service of this order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 172 Ill. 2d R. 335; see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 4th day of May 2000 by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board