

ILLINOIS POLLUTION CONTROL BOARD
February 3, 1994

CITY OF ELGIN,)	
an Illinois municipal corporation,)	
)	
Petitioner,)	
)	
v.)	PCB 93-246
)	(UST Fund)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by M. Nardulli):

This matter is before the Board on a December 1, 1993, petition for review, filed by petitioner City of Elgin (petitioner or Elgin). Elgin seeks review of the Illinois Environmental Protection Agency's (Agency) decision denying petitioner's request for reimbursement of certain costs from the Underground Storage Tank Fund. On December 16, 1993, the Board directed petitioner to file an amended petition which addressed whether the appeal is timely pursuant to the Environmental Protection Act and the Board's rules. The Agency was also directed to address that issue. Petitioner's response was received by the Board on January 19, 1994. The Agency did not respond to the Board's order.

The issue of timeliness of the appeal in PCB 93-246 arises because, although the invoice voucher prepared by the Agency is dated October 12, 1993, October 14, 1993, and October 18, 1993, the accompanying check from the Comptroller is dated October 27, 1993. The petition for review was received by the Board on December 1, 1993. Pursuant to the "mailbox rule" (see 35 Ill. Adm. Code 101.102(d)), the petition for review is timely if the 35-day appeal period began to run on October 27, 1993. The petition is not timely if the appeal period began to run on October 12, October 14 or October 18.

After reviewing petitioner's response, the Board concludes that the appeal in this matter is timely. Petitioner states that the Comptroller's office did not mail the check until October 27, 1993 and that petitioner did not receive notice until October 29, 1993. It appears that the Agency did not notify petitioner directly, but instead sends the voucher to the Comptroller. It would be unfair to require petitioner to file an appeal within 35 days of the date of the Agency decision (here, October 12, October 14, or October 18), when petitioner did not receive notice until after the Comptroller processed the invoice voucher and issued the check.

However, the 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 of the check was issued by the Comptroller." Given the past history of the Underground Storage Tank Fund (Fund), in which there have been long delays in payment because the 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. We are also concerned by the Agency's misstatement of our procedural rules on the Agency's Attachment A. However, in this case, we find that the appeal is timely.

The Board construes petitioner's January 19, 1994, filing as an amended petition. The filing of the amended petition will restart the Board's 120 day decision timeclock, and the decision due date will be calculated from the date of the filing of the amended petition.

This matter is 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 decision deadline as extended by a waiver (petitioner may file a waiver of the statutory decision deadline pursuant to 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.

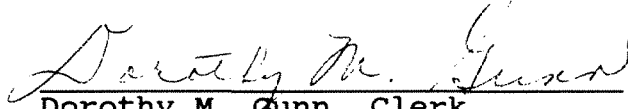
The assigned hearing officer shall inform the Clerk of the Board of the time and location of the hearing at least 40 days in advance of hearing so that public notice of hearing may be published. After hearing, the hearing officer shall submit an exhibit list, a statement regarding credibility of witnesses 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, the statutory decision deadline is May 19, 1994; therefore the decision due date is also May 19, 1994.

If after appropriate consultation with the parties, the parties fail to provide an acceptable hearing date or if after an attempt the hearing officer is unable to consult with the parties, the hearing officer shall unilaterally set a hearing date in conformance with the schedule above. The hearing officer and the parties are encouraged to expedite this proceeding as much as possible. The Board notes that Board rules (35 Ill. Adm. Code 105.102) require the Agency to file the entire

Agency record of the permit application within 14 days of notice of the petition.

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 9th day of February, 1994, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board