

ILLINOIS POLLUTION CONTROL BOARD
February 3, 2000

WHOLESALE OIL COMPANY (Belmont),)
)
 Petitioner,)
)
 v.) PCB 00-120
) (UST - Appeal)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

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

On December 14, 1999, the Illinois Environmental Protection Agency (Agency) issued a final determination, denying Wholesale Oil Company's (petitioner) request for reimbursement from the Underground Storage Tank Fund. By letter dated January 13, 2000, petitioner asked that the Agency join a request for a 90-day extension of the 35-day appeal period. A copy of petitioner's letter was received by the Board on January 14, 2000. Any joint request for a 90-day extension of the 35-day appeal period was due on or before January 18, 2000, *i.e.*, 35 days after the Agency's final determination. See 415 ILCS 5/40(a)(1) (1998). To date, the Board has not received a joint request for a 90-day extension.

Because the Agency has not filed a joint request for a 90-day extension in a timely manner, the statutory condition for the extension has not been met. Accordingly, the Board cannot grant a 90-day extension of the 35-day appeal period pursuant to Section 40(a)(1) of the Environmental Protection Act (415 ILCS 5/40(a)(1) (1998)). The Board can, however, construe petitioner's letter, described above and filed on January 14, 2000, as a timely petition for review so that petitioner will not lose its right to appeal the Agency's determination.¹ See, *e.g.*, North Shore Sanitary District v. Illinois Environmental Protection Agency (May 7, 1998), PCB 98-149, slip op. at 1; Jake Seabury v. Illinois Environmental Protection Agency (June 17, 1998), PCB 98-147, slip op. at 1. The Board does so here.

Petitioner's request, construed as a petition for review, however, is not sufficient under the Board's rules. See 35 Ill. Adm. Code 101.103, 105.102(a). Most importantly, the petition fails to attach a copy of the Agency determination that the Board is to review. The Board

¹ Generally, to appeal an Agency determination, the appeal must be filed with the Board within 35 days after the Agency's final determination. See 415 ILCS 5/40(a)(1) (1998). However, the 35-day appeal period can be extended "for a period of time not to exceed 90 days by written notice provided to the Board from the applicant and the Agency within the initial appeal period." 415 ILCS 5/40(a)(1) (1998). Thus, any joint request was due to be filed with the Board no later than January 18, 2000, 35 days after the Agency's final determination.

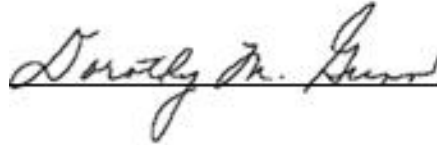
therefore gives petitioner 30 days from the date of this order to file an amended petition for review, including a copy of the Agency's determination. If the petitioner does not file an amended petition for review within this time period, including proof of service of the amended petition on the Agency, the Board will dismiss this matter and close the docket.

The 120-day statutory period in which the Board must render a final decision will begin running as of the date of the filing of the amended petition. Additionally, a \$75 filing fee will be required at such time as petitioner files the amended petition. See 35 Ill. Adm. Code 101.120(b)(3).

IT IS SO ORDERED.

Board Member N.J. Melas abstained.

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 2000 by a vote of 4-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board