

ILLINOIS POLLUTION CONTROL BOARD
February 3, 1994

TWOMEY COMPANY,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 92-199
	)	(UST Fund)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by E. Dunham):

On January 5, 1994, Twomey Company (Twomey) filed a status report in response to the Board's December 2, 1993 order. The status report was accompanied by a motion to file instant as the status report was filed one day after the date specified in the Board order. The Board grants Twomey's motion to file instant and accepts the status report. The Environmental Protection Agency (Agency) did not file a status report.

Twomey notes that in April 1993 it met with the Agency and that a tentative settlement had been reached. However, the Agency requested additional documentation on some issues. On April 23, 1993, Twomey provided the Agency with the additional documentation as requested. Twomey sent several follow-up letters to the Agency, but did not receive a reply from the Agency. On September 27, 1993, Twomey received a message from the attorney for the Agency that the settlement agreement had been approved. However, a finalized settlement agreement has not been received by Twomey.

Twomey contends that the Agency has significantly delayed settlement in this matter through its lack of response. Twomey also notes that it has expended a great deal of time and expense in pursuing this matter. Twomey requests the Board to compel the Agency to adhere to the terms of the settlement and to pay Twomey the sum of \$11,054.56. Twomey also requests the Board to order the Agency to pay Twomey's attorney fees incurred due to the Agency's delay and failure to respond. In the alternative, Twomey requests that the Board set a hearing to determine the basis for the Agency's delay or a hearing on the merits in this matter.

The Board has previously acknowledged that the "law favors settlements". (See People v. Kershaw, PCB 92-164, (Order of August 26, 1993 on reconsideration at p. 6 and cases cited therein.) However, the Board lacks authority to compel the Agency to adhere to the terms of the settlement where there is no signed settlement agreement. Accordingly, the Board denies

Twomey's request to compel the Agency to adhere to the terms of the settlement agreement.

Twomey also requests that the Board order the Agency to pay Twomey's attorney fees incurred due to the Agency's failure to respond to this matter pursuant to 35 Ill. Adm. 101.280 and pursuant to 415 ILCS 5/57.8(1). Twomey is seeking an award of attorney fees based on sanctions and on a new amendment to the Act found in Title XVI.

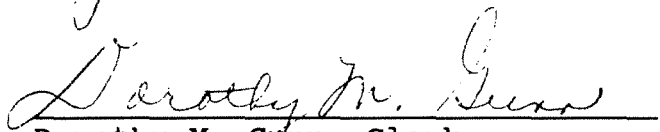
The Board finds no basis to award attorney fees as sanctions at this time. Pursuant to section 101.280 of the Act, the Board will impose sanctions if either party unreasonably refuses to comply with the Board's procedural rules or order of the Board or its hearing officer. The Agency has not violated a Board order or a procedural rule by its failure to finalize the settlement agreement or respond to Twomey's requests. The Agency has however violated the Board's order of December 2, 1993, by not filing a status report by January 3, 1994, as ordered.

As for Twomey's claim for attorney fees under section 57.8(1) of the Act, the Board finds no reasoning for the relief requested. Attorney fees are only available under section 57.8(1) should Twomey prevail before the Board, in which case the Board may authorize payment of legal fees. In addition, no transition election pursuant to section 57.13(b) is in the record and corrective action has already been performed at the site. Therefore relief under Title XVI, which was adopted on September 13, 1993, is not available. Accordingly, the Board denies Twomey's request for attorney fees.

Twomey further requests that the Board set this matter for hearing on the merits. The Board instructs the hearing officer to set this matter for hearing after consultation with the parties.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do hereby certify that the above order was adopted on the 3rd day of February, 1994, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board