

ILLINOIS POLLUTION CONTROL BOARD  
October 20, 1994

MONTGOMERY WARD & CO., )  
INCORPORATED., )  
 )  
Petitioner, )  
 )  
v. ) PCB 94-289  
 ) (UST Fund)  
ILLINOIS ENVIRONMENTAL, )  
PROTECTION AGENCY, )  
 )  
Respondent. )

ORDER OF THE BOARD (by M. McFawn):

On October 11, 1994, Montgomery Ward & Co., Incorporated (Montgomery Ward) filed by personal service a petition for review of an Illinois Environmental Protection Agency (Agency) final reimbursement determination from the Underground Storage Tank Fund. The Agency issued a final reimbursement decision on September 2, 1994, accompanied by attachment A which contains the stated reasons for deductions. The final determination concerns Montgomery Ward's site located at 10601 West Seymour Avenue, Franklin Park, Cook County, Illinois.

Section 22.18b(g) of the Act (415 ILCS 5/22.18b(g) (1992)) provides that appeals of Agency reimbursement decisions are governed by Section 40 of the Act. (415 ILCS 5/40 (1992)) Section 40 of the Act states that "[i]f the Agency refuses to grant or grants with conditions a permit under Section 39 of this Act, the applicant may, within 35 days, petition for a hearing before the Board to contest the decision of the Agency." The Board has adopted procedural rules for when parties are to compute the period of time for filing such petition. The Board's procedural rule at 35 Ill. ADM. Code 101.109 states:

Computation of any period of time prescribed by this Chapter or the Act shall begin with the first calendar day following the day on which the act, event or development occurs and shall run until the end of the last day, or the next business day if the last day is a Saturday, Sunday or national or state legal holiday.

Thus in this case the 35-day period for Montgomery to file an appeal with the Board began on September 3, 1994 and ended on October 7, 1994. The issuance date of the Comptroller's reimbursement check is the date of the Agency decision, which was Friday September 2, 1994, and not the date Montgomery received the Comptroller's check. Therefore, pursuant to the Board's procedural rules the 35 day period began on Saturday, September

3, 1994, and ended Friday October 7, 1994. In order for the Board to have had jurisdiction over the matter, Montgomery, by using personal service, had to have filed its petition for review before or on October 7, 1994. Montgomery filed by personal service on October 11, 1994. Montgomery's inaction until October 11, 1994, denies it the right to appeal the Agency decision before the Board.

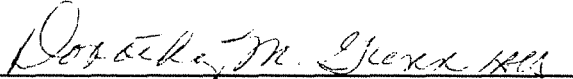
The Board, having no jurisdiction to hear this appeal, dismisses the case and closes the docket in this matter.

IT IS SO ORDERED.

Board member R. C. Flemal dissented.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1992)) provides for the appeal of final Board orders within 35 days of the date of service of this order. The Rules of the Supreme Court of Illinois establish filing requirements. (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 20<sup>th</sup> day of October, 1994, by a vote of 4-1.

  
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 Dorothy M. Gunn, Clerk  
 Illinois Pollution Control Board