

ILLINOIS POLLUTION CONTROL BOARD  
February 4, 1999

|                        |   |                       |
|------------------------|---|-----------------------|
| DEWEY'S SERVICE, INC., | ) |                       |
|                        | ) |                       |
| Petitioner,            | ) |                       |
|                        | ) |                       |
| v.                     | ) | PCB 99-107            |
|                        | ) | (UST - Reimbursement) |
| ILLINOIS ENVIRONMENTAL | ) |                       |
| PROTECTION AGENCY,     | ) |                       |
|                        | ) |                       |
| Respondent.            | ) |                       |

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

On a January 27, 1999, petitioner Dewey's Service, Inc. filed a petition for appeal of a December 21, 1998 decision of the Illinois Environmental Protection Agency (Agency) concerning its application for reimbursement from the underground storage tank fund. This matter is dismissed as the Board lacks jurisdiction to hear petitions untimely filed.

The petitioner seeks to appeal a December 21, 1998 Agency decision. Section 40(a)(1) of the Environmental Protection Act (415 ILCS 5/40(a)(1) (1996)) requires that any appeal of an Agency decision must be filed within 35 days of the Agency's decision. The Agency issued its decision on December 21, 1998; therefore, the 35-day appeal period expired on January 25, 1999.

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).

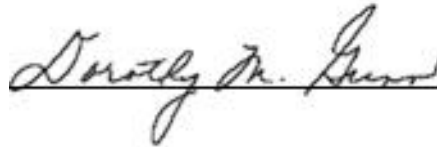
The Board received the petition for appeal on January 27, 1999, two days after the expiration of the 35-day appeal period. As the petition was received by the Board after the January 25, 1999 due date, under 35 Ill. Adm. Code 101.102(d), the Board looks to the date of mailing to determine whether the petition was timely filed. The *pro se* petition is dated January 25, 1999, but contains no proof of service page as required pursuant to 35 Ill. Adm. 101.103, 101.143. Examination of the mailing envelope reveals January 26, 1999, to be the date of the postmark, and the date on the express mail origin sticker affixed to the envelope. The petition is deemed filed on January 26, 1999; one day after the expiration of the 35-day appeal period. The Board cannot accept this untimely petition for appeal. See Indian Refining v. IEPA (July 25, 1991), PCB 91-110; Pierce & 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 (1996)) 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 February 1999 by a vote of 7-0.

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

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board