

ILLINOIS POLLUTION CONTROL BOARD
March 6, 1997

SCOTT-MORGAN CUSD #2,)	
)	
Petitioner,)	
)	
v.)	PCB 97-142
)	PCB 97-152
ILLINOIS ENVIRONMENTAL)	(UST-Reimbursement)
PROTECTION AGENCY,)	(Consolidated)
)	
Respondent.)	

ORDER OF THE BOARD (by K.M. Hennessey):

On February 24, 1997, Scott-Morgan CUSD #2 (petitioner) filed a petition for review of Illinois Environmental Protection Agency (Agency) final determinations regarding two separate requests for reimbursement from the Underground Storage Tank Fund ("UST Fund"). The Agency made two final determinations on January 16, 1997, one regarding reimbursement for the period of December 1, 1994 to March 31, 1995 (first time period) and the other for April 1, 1995 to June 30, 1995 (second time period). The final determinations concern petitioner's site located at 100 West Rockwood, Bluffs, Scott County, Illinois.

Since petitioner is seeking review of two separate decisions, the Board will docket the appeal of the Agency's decision regarding the first time period in docket PCB 97-142 and open a new docket PCB 97-152 for the appeal of the Agency's decision regarding the second time period. Further, as there are two separate appeals, petitioner is directed to remit a filing fee of \$75.00 for docket PCB 97-152 no later than April 7, 1997.

These matters are accepted for hearing. Since the two appeals pertain to the same site and petitioner and appear to involve the same issues, the Board hereby consolidates these appeals for purposes of hearing. The Board makes no determination as to whether these appeals will be consolidated for purposes of decision.

With respect to the hearing, the Board notes that laws regarding leaking underground storage tanks have undergone many changes over recent years. It is unclear from the petition which laws petitioner considers applicable in this matter. Accordingly, at hearing the parties shall address (1) which provisions and versions of the Illinois Environmental Protection Act (415 ILCS 5/1 et seq.) and Board regulations, if any, apply to reimbursement of petitioner from the UST Fund, including, but not limited to, petitioner's place on any Agency listing of priority in connection with the UST Fund and (2) the Board's authority to award petitioner attorneys' fees and expenses in bringing these appeals.

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 Board will assign a hearing officer to conduct hearings consistent with this order, and the Clerk of the Board shall promptly issue appropriate directions to that assigned hearing officer.

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 5 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. Absent any future waivers of the decision deadline, the statutory decision deadline is now June 24, 1997 (120 days from February 24, 1997); the Board meeting immediately preceding the decision deadline is scheduled for June 19, 1997.

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 reimbursement requests 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 _____ day of _____, 1997, by a vote of _____.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board