

ILLINOIS POLLUTION CONTROL BOARD

March 7, 1996

COAL CITY CITGO, )  
 )  
 Petitioner, )  
 ) PCB 96-173  
 v. ) (UST Fund - 90-Day Extension)  
 )  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 )  
 Respondent. )

ORDER OF THE BOARD (by M. McFawn):

On January 31, 1996, petitioner Coal City Citgo filed a notice of extension of the 35-day appeal period pursuant to Section 40 of the Act, relating to an October 25, 1995 Illinois Environmental Protection Agency (Agency) UST determination. On February 23, 1996 the Agency filed a motion to dismiss, seeking to dismiss petitioner's request for an extension due to lack of jurisdiction. Coal City Citgo filed a response to the motion to dismiss on February 28, 1996.

In its January 31, 1996 notice of extension, Coal City Citgo states that it mailed its request for extension to the Agency, but that its letter was lost either in the mail or at the Agency. Coal City Citgo has attached to its notice of extension a copy of a letter to the Agency, dated November 15, 1995, which asks the Agency to request a 90-day extension from the Board.

In its motion to dismiss, the Agency states that a search of its records indicates it did not receive petitioner's request. The Agency further states that petitioner did not contact the Agency until January 22, 1996. The Agency asserts that petitioner did not appeal the Agency's decision within the 35 day time limit, and that no request for extension to file the appeal was filed with the Board. The Agency therefore requests that the Board dismiss this matter for lack of jurisdiction.

In its response to the motion to dismiss, Coal City Citgo states that the Agency did not prove that it did not receive the request. Coal City Citgo also disputes the assertion that it did not contact the Agency until January 22, 1996, and states that it made earlier attempts to contact the Agency. It asserts that it previously attempted to contact the Agency by phone beginning the last week in December, but was unsuccessful in reaching the correct persons. Coal City Citgo asserts that basing the motion to dismiss on its reaction time to the Agency's non-response is not appropriate, especially since there is no guideline as to how quickly the Agency will respond to a written request.

P.A. 88-690 (SB1724) effective January 24, 1995, amends Section 40(c) of the Environmental Protection Act, which governs the appeal process, to provide:

the 35-day period for petitioning for a hearing may 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.

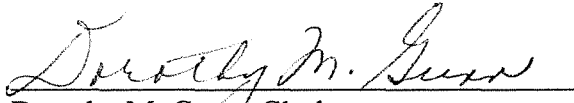
Accordingly, since the parties agree the Agency issued its final determination letter on October 25, 1995, any complete notice was due to be filed or postmarked no later than November 29, 1995. (See 35 Adm. Code 101.102(d) and 101.109.) Coal City Citgo's notice was not received by the Board until January 31, 1996, and the Agency has never filed an agreement to the requested extension. Coal City Citgo's assertions concerning the Agency's receipt and loss of its letter notwithstanding, neither party filed an extension request "within the initial appeal period" as required pursuant to amended Section 40(c). Because the statutory conditions for the extension have not been met, the Board cannot grant a 90-day extension of the time in which to file an appeal pursuant to Section 40(c).

The Agency's motion to dismiss is hereby granted, and petitioner's request for a 90-day extension is denied. This matter is dismissed and the docket is closed.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1994)) 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 7<sup>th</sup> day of March, 1996, by a vote of 7-0.

  
 Dorothy M. Gunn, Clerk  
 Illinois Pollution Control Board