

ILLINOIS POLLUTION CONTROL BOARD
February 1, 1996

CONSOLIDATED DISTILLED
PRODUCTS, INC.,

Petitioner,

v.

OFFICE OF THE STATE FIRE
MARSHAL,

Respondent.

PCB 96-39
(UST Fund)

ORDER OF THE BOARD (by J. Yi):

This matter is before the Board on a petition for review filed by Consolidated Distilled Products, Inc. (Consolidated) on August 14, 1995. Consolidated is appealing a July 10, 1995 final determination of the Office of State Fire Marshal (OSFM) concerning Consolidated's eligibility to access the Underground Storage Tank Fund. On August 24, 1995 the Board accepted this matter for hearing.

On October 31, 1995, OSFM filed a general appearance before the Board. On November 6, 1995, OSFM filed a motion to dismiss Consolidated's petition for review for lack of jurisdiction and insufficiency of the pleadings. OSFM stated that it was never served by Consolidated as required by the Board's procedural rules at 35 Ill. Adm. Code 107.123. Citing to Mr. "C" Food & Liquor v. Office of the State Fire Marshal, PCB 94-387, (January 11, 1995), OSFM requested the Board to dismiss the action due to Consolidated's failure to serve OSFM the petition.¹ Additionally, OSFM argues that the petition is insufficient pursuant to the Board's procedural rules at 35 Ill. Adm. Code 107.122.

In our order of December 7, 1995 we denied the OSFM's motion to dismiss and directed Consolidated to file an amended petition curing such deficiencies on or before January 5, 1996. Consolidated was also directed to serve the amended petition on OSFM pursuant to 35 Ill. Adm. Code 107.123. The Board also stated that if Consolidated failed to timely file an amended petition or any other appropriate motion, this matter will be subject to dismissal.

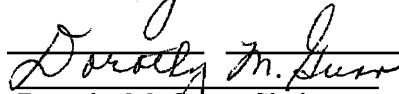
As of the date of this order Consolidated has not filed an amended petition or any other motion. Therefore, pursuant to our previous order, we dismiss the petition and close this docket.

IT IS SO ORDERED.

¹In Mr. "C" Food & Liquor the Board found that the petition was insufficient as filed and that the petition contained no evidence that the OSFM has been served with notice of the petition's filing as is required by Section 107.123. The Board directed petitioner to file an amended petition curing the petition deficiencies but did not dismiss the petition. Unlike here, in Mr. "C" Food & Liquor the OSFM did not file a motion to dismiss for the inadequacies of the petition.

Section 41 of the Environmental Protection Act (415 ILCS 5/40.1) provides for the appeal of final Board orders within 35 days of service of this decision. The Rules of the Supreme Court of Illinois establish filing requirements. (But 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 1st day of February, 1996, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board