

ILLINOIS POLLUTION CONTROL BOARD
April 20, 1994

EUGENE W. GRAHAM,)	
)	
Petitioner,)	
)	
v.)	PCB 95-89
)	(UST Fund)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by J. Yi):

On March 10, 1995, Eugene W. Graham, owner of the Libertyville Citgo (Graham), filed a petition for review of the Illinois Environmental Protection Agency's (Agency) Underground Storage Tank Fund reimbursement determination regarding its facility's tanks located at 109 South Milwaukee Ave., Libertyville, Illinois. Graham filed the petition for review pursuant to Section 57.8(i) and 40(a) of the Environmental Protection Act (Act) and 35 Ill. Adm. Code 732.602(h) of the Board's regulations. (415 ILCS 5/57.8(i) and 5/40(a) (1992).) This matter was accepted for hearing at our March 16, 1995 meeting. A hearing has been scheduled for May 10, 1995.

On March 20, 1995 the Agency filed a motion to dismiss the petition for review for lack of subject matter jurisdiction. The Agency states that Graham filed the petition for review pursuant to Title XVI (415 ILCS 5/57 et. seq.), but fails to meet the requirements to seek relief under Title XVI. The Agency also filed a motion to file its record instanter and the record on April 4, 1995. The Agency's instanter motion is granted.

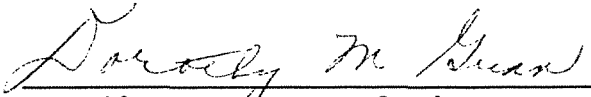
On March 28, 1995, Graham filed a response to the motion to dismiss and a motion for leave to amend its petition. In its response Graham states that the petition inadvertently referred to Title XVI instead of the former Illinois underground storage tank response and cost reimbursement program set forth in Sections 22.18 through 22.18(c) of the Act. (415 ILCS 5/22.18-5/22.18 (1992).) Graham seeks leave to amend its petition to conform with the appropriate provisions of the Act under which it is requesting an appeal of the Agency's reimbursement determination. The Agency has not responded to Graham's motion for leave to amend its petition as of the date of this order. On March 29, 1995, petitioner waived the statutory decision deadline until July 31, 1995.

The Board grants Graham's motion for leave to amend its petition. Therefore, the Agency's motion to dismiss is moot.

For purposes of calculation of the statutory decision deadline pursuant to Section 40(a)(2) of the Act (415 ILCS 5/42(a)(2)), the filing of an amended petition will restart the Board's 120-day statutory decision deadline. Unless an amended petition is filed on or before May 5, 1995, curing the above-noted defects, this matter will be subject to dismissal.

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 20th day of April, 1995, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board