

ILLINOIS POLLUTION CONTROL BOARD  
September 6, 2001

MARCONI DATA SYSTEMS, INC. and )  
MARCONI, INC., )  
 )  
Petitioners, )  
 )  
v. ) PCB 02-25  
 ) (UST Appeal)  
 )  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

ORDER OF THE BOARD (by S.T. Lawton, Jr.):

On August 23, 2001, Marconi Data Systems, Inc. and Marconi, Inc. timely filed a petition asking the Board to review a July 18, 2001 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2000); 35 Ill. Adm. Code 105.404. Section 105.404 requires a petitioner to file a petition for review with the Board within 35 days after the date of service of the Agency's final decision. 35 Ill. Adm. Code 105.404. Petitioners alleged in their petition for review that the Agency served its July 18, 2001 letter of final action on petitioners on July 20, 2001. Petitioners filed their petition for review with the Board 34 days from this date, on August 23, 2001.

The Agency denied in part the request by Marconi Data Systems, Inc. and Marconi, Inc for reimbursement of corrective action costs from the Underground Storage Tank Fund regarding an underground storage tank (UST) site at 5700 West Touhy in Chicago, Illinois. The Agency determined that it would partially reimburse the petitioners for \$89,518.24 of the requested amount of \$135,750.23 in corrective action costs, on the grounds that it deducted several items as accounting and technical irregularities.

Marconi Data Systems, Inc. and Marconi, Inc. appeal on the grounds that the Agency incorrectly denied the remaining amount requested by the petitioners. They allege in their petition that the Agency should have made such deductions after, rather than before, it adjusted the petitioners' eligible costs. Petitioners also allege that the Agency made three substantive errors by: improperly calculating the adjustment factor that reflects the proportion of eligible USTs to ineligible USTs; deducting costs for lacking substantiation when the record contained sufficient information on such costs; and incorrectly classifying corrective action costs as items that were not recognized as labor classifications by the Agency. Pet. at 3.<sup>1</sup> The petition by Marconi Data Systems,

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<sup>1</sup> Marconi Data Systems, Inc. and Marconi, Inc. filed a petition for review with the Board on August 23, 2001, which is referred to as "Pet. at \_\_\_\_."

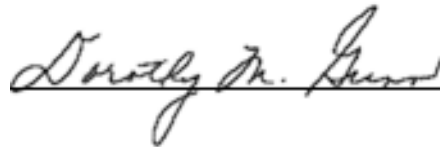
Inc. and Marconi, Inc. meets the content requirements of 35 Ill. Adm. Code 105.408. The Board accepts the petition for hearing.

Marconi Data Systems, Inc. and Marconi, Inc. have the burden of proof. 35 Ill. Adm. Code 105.112(a). Hearings will be based exclusively on the record before the Agency at the time the Agency issued its determination. 35 Ill. Adm. Code 105.412. Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2000)), which only Marconi Data Systems, Inc. and Marconi, Inc. may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Marconi Data Systems, Inc. and Marconi, Inc. may deem their request granted. *See* 415 ILCS 5/40(a)(2) (2000). Currently, the decision deadline is December 21, 2001 (the 120th day August 23, 2001). *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for December 20, 2001.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination within 30 days after Marconi Data Systems, Inc. and Marconi, Inc. filed the petition. 35 Ill. Adm. Code 105.410(a). If the Agency wishes to seek additional time to file the record, it must file a request for extension before the date on which the record is due to be filed. 35 Ill. Adm. Code 105.116. The record must comply with the content requirements of 35 Ill. Adm. Code 105.410(b).

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 6, 2001, 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