

ILLINOIS POLLUTION CONTROL BOARD
January 11, 1995

STROH OIL COMPANY,)	
)	
Petitioner,)	
)	
v.)	PCB 94-215
)	(UST Fund)
OFFICE OF THE STATE)	
FIRE MARSHAL,)	
)	
Respondent.)	

ORDER OF THE BOARD (by M. McFawn):

This matter is before the Board on several filings. Petitioner Stroh Oil Company (Stroh) filed a motion to file instanter an amended petition and the proposed amended petition on December 21, 1994. Respondent Office of the State Fire Marshal (OSFM) filed a response to the motion to file instanter on December 29, 1994. Finally, on January 9, 1995, Stroh filed a motion for leave to file a reply and the proposed reply. The parties also filed a December 21, 1994 agreed motion to cancel a hearing scheduled for December 29, 1994, and the hearing was cancelled by order of the hearing officer. Because we find that Stroh has demonstrated that a reply is necessary to prevent material prejudice, we grant its motion for leave to file a reply. Additionally, for the reasons set forth below, we grant Stroh's motion to file instanter its amended petition.

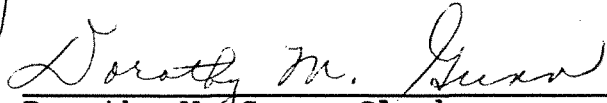
In support of its motion to file instanter its amended petition, Stroh states that during discovery, it discovered two additional grounds for obtaining relief. Stroh states that it was not aware of these grounds for relief until the deposition of Keith Immke of the OSFM on December 14, 1994. The OSFM asserts in response that the Board does not have authority to consider the first argument raised in the amended petition, and that the amended petition does not provide enough specificity for OSFM to make an intelligible response.

We find that petitioner may properly amend its petition at this time to reflect information it obtained during discovery. "[P]leadings may be amended to conform with the proof, so long as no unfair surprise results which cannot be remedied by a continuance which could be granted consistent with the minimum timelines prescribed by [Part 107]." (35 Ill. Adm. Code 107.246.) The arguments set forth by respondent OSFM concern the merits of the new grounds for relief raised by petitioner, not the appropriateness of allowing petitioner to file an amended petition. Since the hearing previously scheduled in this matter has been cancelled, there is no material prejudice to respondent which cannot be cured by a continuance of the hearing date.

We express no opinion on the merits of the two additional grounds for relief set forth by petitioner. The merits of petitioner's additional grounds for relief can be addressed by the parties at hearing and in any post-hearing pleadings.

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 11th day of January, 1995, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board