

ILLINOIS POLLUTION CONTROL BOARD
January 9, 2003

ILLINOIS AYERS OIL COMPANY,)	
)	
Petitioner,)	
)	
v.)	PCB 03-37
)	(UST Fund)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by T. E. Johnson):

The Board accepts for hearing Illinois Ayers Oil Company's (Ayers Oil) timely filed petition appealing the Environmental Protection Agency's (Agency) decision. The Agency modified the proposed budget for Site Classification Work Plan regarding an underground storage tank site at 1672 North Henderson Street in Knox County. Ayers Oil appeals on the grounds that the Agency's action was arbitrary and capricious. Ayers Oil's petition meets the content requirements of 35 Ill. Adm. Code 105.408.

On October 3, 2002, the Board, at the parties' request, extended until December 30, 2002, the time period within which Ayers Oil may appeal an August 27, 2002 determination of the Agency. *See* 415 ILCS 5/40(a)(1) (2000) *amended by* P.A. 92-0574, eff. June 26, 2002; 35 Ill. Adm. Code 105.406. On December 27, 2002, Ayers Oil sent its petition by certified mail to the Board asking the Board to review the Agency's determination; the petition was received by the Board on December 31, 2002. Because the postmark date precedes the filing deadline date, the petition is deemed timely filed on the postmark date. 35 Ill. Adm. Code 101.300(b)(2).

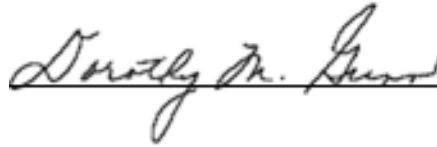
Ayers Oil has the burden of proof. 35 Ill. Adm. Code 105.112(a). Hearings will be based exclusively on the record before the Agency at the time the Agency issued its determination. 35 Ill. Adm. Code 105.412. Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2000) *amended by* P.A. 92-0574, eff. June 26, 2002), which only Ayers Oil may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Ayers Oil may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2000) *amended by* P.A. 92-0574, eff. June 26, 2002. Currently, the decision deadline is April 30, 2003 (the 120th day after December 31, 2002). *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for April 17, 2003.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by January 26, 2003, which is 30 days after Ayers Oil 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 January 9, 2003, by a vote of 5-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board