

ILLINOIS POLLUTION CONTROL BOARD
January 23, 2003

D & R SERVICE,)	
)	
Petitioner,)	
)	
v.)	PCB 03-36
)	(UST Fund)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On October 3, 2002, the Board, at the parties' request, extended until January 8, 2003, the time period within which D & R Service (D&R) may appeal a September 5, 2002 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2002), 35 Ill. Adm. Code 105.406. On January 8, 2003, D&R sent its petition by certified mail to the Board asking the Board to review the Agency's determination; the Board received the petition on January 13, 2003. 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).

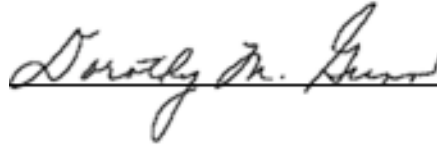
The Agency approved a modified Site Classification Work Plan Budget (budget) regarding an underground storage tank site at 1190 S. Main St. in Red Bud, Randolph County. D&R appeals on the grounds that the Agency's modification to the budget was arbitrary and capricious. D&R's petition meets the content requirements of 35 Ill. Adm. Code 105.408. The Board accepts the petition for hearing.

D&R 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) (2002)), which only D&R may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, D&R may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2002). Currently, the decision deadline is May 13, 2003 (the 120th day after January 13, 2003). *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for May 1, 2003.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by February 12, 2003, which is 30 days after D&R 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 23, 2003, by a vote of 6-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board