

ILLINOIS POLLUTION CONTROL BOARD

April 3, 2003

WABASH VALLEY SERVICE-ALBION,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 03-89
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by N.J. Melas):

On January 9, 2003, the Board, at the parties' request, extended until March 18, 2003, the time period within which Wabash Valley Service-Albion (Wabash) may appeal a November 13, 2002 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.406. On March 20, 2003 (postmark dated March 18, 2003), Wabash filed a petition asking the Board to review the Agency's determination.

The Agency has rejected Wabash's budget regarding an underground storage tank site in Albion, Edwards County, alleging that Wabash did not demonstrate that the costs are reasonable. Wabash disputes the Agency's decision regarding whether the costs were reasonable and consistent with the associated technical plan, as required by Section 57.7(c)(4)(C) and Section 732.505(c) of the Board rules. 415 ILCS 57.7(c)(4)(C); 35 Ill. Adm. Code 732.505(c). Wabash further contends that the costs incurred were similar in engineering practices and technical protocol as those historically approved by the Agency, and that the Agency provided no technical justification for the denial and its decision is therefore arbitrary and capricious. Finally, Wabash alleges that all costs were necessary and reasonable. Wabash's petition meets the content requirements of 35 Ill. Adm. Code 105.408. The Board accepts the petition for hearing.

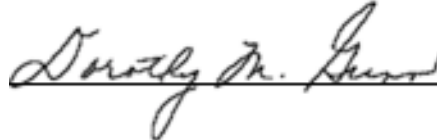
Wabash has the burden of proof. 35 Ill. Adm. Code 105.112(a). Hearings will be based exclusively on the record before the Agency at the time the Agency issued its determination. 35 Ill. Adm. Code 105.412. Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2002)), which only Wabash may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Wabash may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2002). Currently, the decision deadline is August 1, 2003 (the 120th day after April 3, 2003). *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for July 24, 2003.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by April 19, 2003, which is 30 days after Wabash 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 April 3, 2003, by a vote of 7-0.

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

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board