

ILLINOIS POLLUTION CONTROL BOARD
June 5, 2003

MICK'S GARAGE,)	
)	
Petitioner,)	
)	
v.)	PCB 03-126
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On March 6, 2003, the Board, at the parties' request, extended until May 16, 2003 the time period within which Mick's Garage (Mick's) may appeal a January 10, 2003 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.406. On May 20, 2003, Mick's filed a petition asking the Board to review the Agency's determination. Because the postmark date of the petition is within the extended time for filing, the petition was timely filed. 35 Ill. Adm. Code 101.300(b)(2), 105.404.

The Agency approved the site characterization report and corrective action plan and deductible determination regarding Mick's underground storage tank site located at 1251 East Chain of Rocks Road, Pontoon Beach, Madison County. Mick's appeals on the grounds that the Agency based its deductible determination on a report of a suspected leak in the tank registration, rather than on the log of tank removal, which indicated that no leakage had occurred. Mick's petition meets the content requirements of 35 Ill. Adm. Code 105.408. The Board accepts the petition for hearing.

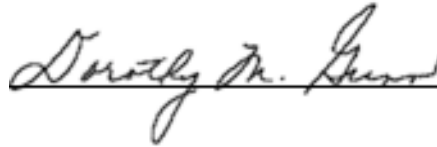
But, in accepting this petition for hearing, the Board notes that both the denial letter and the appeal reference what appears to be a prior, 1991 deductibility determination. The Board's acceptance of this petition is in no way intended to preclude any arguments by the parties as to whether this appeal of a January, 2003 determination is a timely or proper vehicle for the appeal of any earlier deductibility determination.

Mick's 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 Mick's may extend by waiver. *See* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Mick's may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2002). Currently, the decision deadline is September 17, 2003 (the 120th day after May 20, 2003). *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for September 4, 2003.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by June 19, 2003, which is 30 days after Mick's 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 June 5, 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