

ILLINOIS POLLUTION CONTROL BOARD
July 10, 2003

FREEDOM OIL COMPANY,)	
)	
Petitioner,)	
)	
v.)	PCB 03-54
)	PCB 03-105
ILLINOIS ENVIRONMENTAL)	PCB 03-179
PROTECTION AGENCY,)	PCB 04-2
)	(UST Fund)
Respondent.)	PCB 03-56
)	(UST Appeal)
)	(Consolidated)

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

On July 2, 2003, Freedom Oil Company (Freedom Oil) timely filed a petition asking the Board to review a May 28, 2003 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.402. At issue is the Agency's approval of reimbursement of requested corrective action costs, with modification, regarding Freedom Oil's underground petroleum storage tank facility at 401 South Main, Paris, Edgar County. Freedom Oil appeals on the grounds that the methodology used to modify the amount of reimbursement was mathematically and factually flawed and was contrary to law.

Freedom Oil's petition meets the content requirements of 35 Ill. Adm. Code 105.408. The Board accepts this petition for hearing.

Freedom Oil also asks the Board to consolidate this appeal (PCB 04-2) with four other Freedom Oil appeals (PCB 03-54, PCB 03-56, PCB 03-105, and PCB 03-179) that the Board, by orders of February 20, 2003 and April 17, 2003, consolidated for hearing. Pet. at 2. Freedom Oil states that factual and legal issues in the appeals are similar and consolidation will conserve resources. *Id.* at 3. The Board notes that the appeals involve the same parties, the same Edgar County leaking UST site, and issues of Freedom Oil's cleanup and cleanup cost reimbursement from the UST Fund.

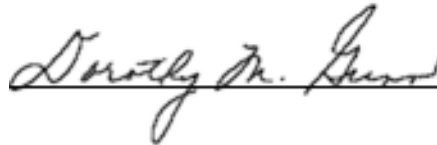
To date, the Agency has not objected to consolidation. The Board will not grant any motion before the expiration of the 14-day response period unless undue delay or material prejudice in a deadline driven proceeding would result. *See* 35 Ill. Adm. Code 101.500(d). A statutory decision deadline does exist in this matter, and waiting for the 14-day response period to lapse would cause undue delay. Accordingly, the Board grants Freedom Oil's motion to consolidate. The appeals are consolidated for hearing, but not necessarily for Board decision. *See* 35 Ill. Adm. Code 101.406. Future filings must reflect the amended caption of this order.

Freedom 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) (2002)), which only Freedom Oil may extend by waiver. *See* 35 Ill. Adm. Code 101.308. If the Board fails to take final action by the decision deadline, Freedom Oil may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2002). Currently, the decision deadline is October 8, 2003, the deadline date of the previously consolidated cases pursuant to a June 1, 2003 waiver. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for October 2, 2003.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by July 31, 2003, which is 30 days after Freedom 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 July 10, 2003, by a vote of 7-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board