

ILLINOIS POLLUTION CONTROL BOARD

March 4, 2004

GREAT LAKES DREDGE & DOCK)	
COMPANY (Site Investigation Budget)	
Amendment Rejection),)	
)	
Petitioner,)	
)	
v.)	PCB 04-143
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

GREAT LAKES DREDGE & DOCK)	
COMPANY (Corrective Action Plan and)	
Budget Rejection),)	
)	
Petitioner,)	
)	
v.)	PCB 04-145
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	(Not consolidated)
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by J.P. Novak):

On February 23, 2004, Great Lakes Dredge & Dock Company filed a petition asking the Board to review a determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.402. On February 26, 2004, Great Lakes Dredge & Dock Company filed exhibits missing from its February 23, 2004 petition. The site at issue here is Great Lakes Dredge & Dock Company's leaking underground storage tank facility at 9320 South Ewing Avenue, Chicago, Cook County.

Review of the petition and exhibits makes clear that the petitioner seeks to review two separate Agency determinations:

1. the January 14, 2004 rejection of an October 2003 first amendment to the Site Investigation Budget, in which the Agency determined that various costs were "in excess of those required to meet the minimum requirements of Title XVI of the Environmental Protection Act (Act)" and cited Board regulations, and

2. the February 9, 2004 rejection of the October 2003 corrective action plan and associated budget. The corrective action plan was rejected due to failure to address certain soil contamination, inclusion of “excessive” investigation practices, and excavation of “unrelated” contaminated soil. The budget was rejected because, since the plan was not approved, the Agency could not determine whether costs were excessive.

Great Lakes Dredge & Dock Company appeals both determinations on the grounds that the Agency’s determination was arbitrary, capricious, and without statutory authority.

The Board does not allow appeal of more than one Agency determination in any single petition for review in a single docket; filing fees required by the Act must accompany the appeal of each separate Agency decision. Separate petitions must be filed, each accompanied by the filing fee required by Section 7.5 of the Act and 35 Ill. Adm. Code 101.302 (e)(3). When one petition attempts to appeal two decisions, the Board typically accepts the petition for hearing as a timely and sufficient appeal in one case, and then reserves a docket for the filing of a sufficient, amended petition in the second docket. Where petitioner believes that two or more separate determinations are best handled together, the Board customarily consolidates the actions upon receipt of a motion by petitioner. The Board does so below.

Docket PCB 04-143 (Site Investigation Budget Amendment Rejection)

The Board has docketed the petition as it relates to the earliest Agency decision, the January 14, 2004 rejection of an October 2003 first amendment to the Site Investigation Budget, as PCB 04-143. As the petition was postmarked February 17, 2004, the Board finds that it was timely filed. See 35 Ill. Adm. Code 101.300 (b)(2). The petition meets the content requirements of 35 Ill. Adm. Code 105.408. The Board accepts the petition for hearing.

Great Lakes Dredge & Dock Company 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 Great Lakes Dredge & Dock Company may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Great Lakes Dredge & Dock Company may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2002). Currently, the decision deadline is June 22, 2004 (the 120th day after February 23, 2004). *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for June 17, 2004.

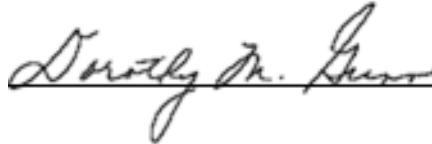
Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by March 24, 2004, which is 30 days after Great Lakes Dredge & Dock Company filed the petition. 35 Ill. Adm. Code 105.410(a). If the Agency wishes to seek additional time to file the 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).

PCB 04-145 Corrective Action Plan and Budget Rejection

The Board has reserved docket PCB 04-145 for the review of the February 9, 2004 rejection of the October 2003 corrective action plan and associated budget. Petitioner is directed to file an amended petition under this docket number, accompanied by the statutory filing fee, within 35 days of the date of this order *i.e.* on or before April 8, 2004. After receipt of an amended petition, the Board will determine whether it is sufficient and will be accepted for hearing. Any amended petition received on or before April 8, 2004, will be deemed timely filed; the Board's 120-day decision deadline will be calculated from the date of filing of the amended petition. In the interests of administrative economy, any consolidation request should accompany the PCB 04-145 petition, and should contain the captions of both petitions.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 4, 2004, 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