

ILLINOIS POLLUTION CONTROL BOARD
April 1, 2004

GREAT LAKES DREDGE & DOCK)	
COMPANY,)	
)	
)	
Petitioner,)	
)	
v.)	PCB 04-143
)	PCB 04-145
ILLINOIS ENVIRONMENTAL)	(UST Appeal)
PROTECTION AGENCY,)	(Consolidated)
)	
Respondent.)	

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

In this order, the Board accepts for hearing an amended petition filed March 29, 2004, in PCB 04-145. The Board also consolidates that case with PCB 04-143, another underground storage tank (UST) appeal, which the Board previously accepted for hearing.

In PCB 04-145, as allowed by the Board's March 4, 2004 order, Great Lakes Dredge & Dock Company (Great Lakes) timely filed an amended petition on March 29, 2004, 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. The site at issue here is Great Lakes' leaking UST facility at 9320 South Ewing Avenue, Chicago, Cook County. The amended petition was accompanied by a motion to consolidate the case with the related appeal PCB 04-143, in which the Board accepted a February 23, 2004 petition for hearing through its March 4, 2004 order.

PCB 04-143 contests the Agency's January 14, 2004 rejection of Great Lakes' October 2003 first amendment to the Site Investigation Budget. The Agency determined that various costs exceeded those required to meet the minimum requirements of Title XVI of the Environmental Protection Act (415 ILCS 5 (2002)) and Board regulations. For the same site and incident, PCB 04-145 contests the Agency's February 9, 2004 rejection of Great Lakes' October 2003 corrective action plan and associated budget. The Agency determined that the corrective action plan failed to address certain soil contamination, included excessive investigation practices, and proposed excavation of "unrelated" contaminated soil. Since the plan was not approved, the associated budget was rejected because the Agency could not determine whether the proposed costs were excessive.

Great Lakes appeals the Agency's February 9, 2004 determination on the same grounds it appeals the Agency's January 14, 2004 determination: that the Agency's determination was arbitrary, capricious, and without statutory authority. The Board accepts the amended petition in PCB 04-145 for hearing. The Board also grants Great Lakes' motion and consolidates PCB 04-

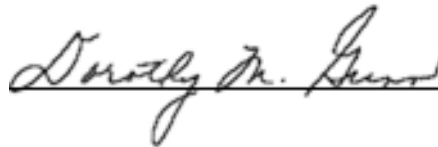
143 and PCB 04-145 for purposes of hearing, but not necessarily for decision. As a practical matter, however, the due date for the Board to decide this consolidated docket, as discussed below, will be determined based on the February 23, 2004 filing date of the initially-filed petition.

Great Lakes has the burden of proof. *See* 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. *See* 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 may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the statutory decision deadline, Great Lakes 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 the February 23, 2004 filing of the petition accepted for hearing in PCB 04-143). *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before this 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 April 28, 2004, which is 30 days after Great Lakes filed the amended petition in PCB 04-145. *See* 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. *See* 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 1, 2004, by a vote of 4-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board