

ILLINOIS POLLUTION CONTROL BOARD

June 17, 2004

ILLIOPOLIS GRAIN COMPANY,)	
)	
Petitioner,)	
)	
v.)	PCB 04-148
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On June 3, 2004, Illiopolis Grain Company (Illiopolis) filed a petition asking the Board to review a January 27, 2004 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.404. At issue is the Agency's deduction of \$4,057.00 from the \$91,087.95 that Illiopolis sought for corrective action costs incurred at its leaking underground petroleum storage tank facility site located at 246 Louisia Street, Illioplis in Sangamon County.

The deductions in question are divided into accounting and technical deductions. Illiopolis appeals on the grounds that the Agency's accounting deductions relate solely to an improperly promulgated "internal guidance" or rate sheet used by the Agency and are arbitrary and capricious. Illiopolis asserts that the technical deduction was related to an overall proportional deduction of the scope of work at the site that was also arbitrary and capricious and without technical justification. Illiopolis' petition meets the content requirements of 35 Ill. Adm. Code 105.408. The Board accepts the petition for hearing.

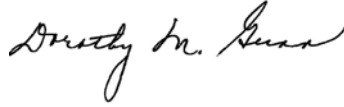
Illiopolis has the burden of proof. 35 Ill. Adm. Code 105.112(a). Hearings will be based exclusively on the record before the Agency at the time the Agency issued its determination. 35 Ill. Adm. Code 105.412. Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2002)), which only Illiopolis may extend by waiver. *See* 35 Ill. Adm. Code 101.308. If the Board fails to take final action by the decision deadline, Illiopolis may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2002). Currently, the decision deadline is September 29, 2004 (the 120th day after June 1, 2004). *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for September 16, 2004.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by July 1, 2004, which is 30 days after Illiopolis 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 17, 2004, by a vote of 5-0.

A handwritten signature in cursive script, appearing to read "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board