ILLINOIS POLLUTION CONTROL BOARD December 16, 2004

MAC'S CONVENIENCE STORES, LLC,)	
Petitioner,)	
v.)	PCB 05-101
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)	(UST Appeal)
Respondent.))	

ORDER OF THE BOARD (by A.S. Moore):

At the parties' request, the Board extended until February 24, 2005, the time period for Mac's Convenience Stores, LLC (Mac's) to appeal an October 21, 2004 determination of the Illinois Environmental Protection Agency (Agency). The Agency's determination concerns petroleum contamination at Mac's gasoline service station, which is located at 105 South Front Street in Braidwood, Will County. In its determination, the Agency rejected several submittals from Mac's under the Leaking Underground Storage Tank (UST) program: a Site Investigation Plan (SIP) and related budget, as well a 45-Day Report.

On December 1, 2004, Mac's timely filed a petition asking the Board to review the Agency's determination. Mac's appeals on the grounds that the procedures detailed in the SIP are necessary; the budget includes an accounting of all costs associated with implementing and completing the SIP; those costs are reasonable and necessary; a release has already been confirmed; the area most likely to be contaminated has already been investigated; and the release investigation and site assessment is in accordance with industry norms. Petition at 2-4. Mac's specifically requests that the Board "reverse the Final Decision of the Agency and approve the SIP and associated budget." *Id.* at 4.

The Board accepts this appeal as timely filed. The Board finds, however, that there are several deficiencies with Mac's petition. Though Mac's asks the Board to reverse the Agency on the SIP and related budget, the petition is unclear regarding the 45-Day Report. Specifically, it is unclear whether Mac's seeks reversal of the Agency's rejection of the 45-Day Report, and, if so, what the grounds are for reversal. *See* 35 Ill. Adm. Code 105.508 (petition must contain a "statement specifying the grounds of appeal"). Mac's must clarify this ambiguity in its petition.

In addition, it is unclear whether Mac's petition was filed by an attorney. Mac's petition was signed by Matt McCure as "Director of Facilities," with an Indiana address. In an adjudicatory proceeding before the Board, like this UST appeal, a company petitioner must be represented by an attorney. *See* 35 Ill. Adm. Code 101.400(a)(2). Accordingly, if Mr. McCure is not an attorney, he cannot represent Mac's in this proceeding. The petition provides no indication that Mr. McCure is an attorney, let alone an attorney licensed and registered to

practice in Illinois, as the Board's procedural rules generally require. *Id.* An out-of-state attorney may practice before the Board, but only if the Board grants a motion to appear *pro hac vice*. *See* 35 Ill. Adm. Code 101.400(a)(3).

By February 3, 2005, Mac's must file an amended petition for review accompanied by the appearance of an attorney. *See* 35 Ill. Adm. Code 101.400(a)(4). Failure to do so will subject this appeal to dismissal. The amended petition must clarify whether and, if so, on what grounds Mac's appeals the Agency's rejection of the 45-Day Report. Further, the amended petition must be filed either by (1) an attorney licensed and registered to practice in Illinois, or (2) an attorney licensed to practice in another state and accompanied by a *pro hac vice* motion. Upon the timely filing of an amended petition, the Board's statutory 120-day period for deciding this appeal will recommence. *See* 35 Ill. Adm. Code 105.114(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 December 16, 2004, by a vote of 5-0.

Dorothy M. Gunn, Clerk

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