

ILLINOIS POLLUTION CONTROL BOARD  
February 3, 2005

CITY OF SULLIVAN,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 05-73
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by G.T. Girard):

On November 4, 2004, the Board, at the parties' request, extended until January 17, 2005, the time period within which City of Sullivan may appeal a September 13, 2004 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.406. On January 19, 2005, City of Sullivan filed a petition asking the Board to review the Agency's determination. Because the postmark date of the petition is within the extended time for filing, the petition was timely filed. 35 Ill. Adm. Code 101.300(b)(2), 105.404. The Agency modified petitioner's high priority corrective action plan budget for City of Sullivan's leaking underground petroleum storage tank facility located at North Park Street, Sullivan, Moultrie County.

City of Sullivan appeals on the grounds that the costs for which reimbursement is now sought, and for which the Agency denied reimbursement, were omitted from a June 11, 2004 settlement agreement entered into between the City of Sullivan and the Agency, and that (1) the costs were omitted due to inadvertence; (2) the Agency was made aware of the costs during the course of settlement negotiations; (3) the Agency was made aware of the fact that the City of Sullivan intended to seek reimbursement for the omitted costs; and (4) the City of Sullivan incurred the omitted costs separately from the costs included in the settlement agreement. The City of Sullivan asks the Board to determine that the costs were reasonable, justifiable, necessary, consistent with generally accepted engineering practices, and eligible for reimbursement from the UST Fund. The City of Sullivan's petition meets the content requirements of 35 Ill. Adm. Code 105.408. The Board accepts the petition for hearing.

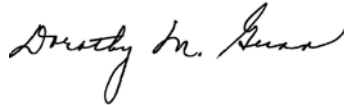
City of Sullivan has the burden of proof. 35 Ill. Adm. Code 105.112(a). Hearings will be based exclusively on the record before the Agency at the time the Agency issued its determination. 35 Ill. Adm. Code 105.412. Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2002)), which only City of Sullivan may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, City of Sullivan may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2002). Currently, the decision deadline is May 19, 2005 (the 120th day

after January 19, 2005). *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for May 19, 2005.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by February 18, 2005, which is 30 days after City of Sullivan 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 February 3, 2005, by a vote of 4-0.

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

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board