

ILLINOIS POLLUTION CONTROL BOARD  
May 19, 2005

RED ROOSTER CORPORATION (f/k/a	)	
CLARK RETAIL ENTERPRISES, INC.)	)	
(CLARK OIL #2086)(December 30, 2004	)	
IEPA determination),	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 05-126
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

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

On May 9, 2005, Red Rooster Corporation (f/k/a Clark Retail Enterprises, Inc.) (Clark Oil #2086) (Red Rooster) filed a petition asking the Board to review a December 30, 2004 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.404. The Board had extended the appeal period until May 9, 2005, in a January 20, 2005 order. At issue is the Agency's denial of Red Rooster's request for reimbursement of certain costs of corrective action from the Underground Storage Tank (UST) Fund for a leaking underground petroleum storage tank facility located at 4805 North War Memorial Drive, Peoria, Peoria County.

Red Rooster appeals on the grounds that the Agency's decision is arbitrary, capricious and without statutory authority. Red Rooster's petition meets the content requirements of 35 Ill. Adm. Code 105.408. The Board accepts the petition for hearing.

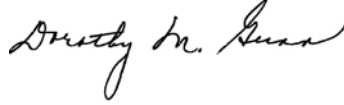
Red Rooster has the burden of proof. 35 Ill. Adm. Code 105.112(a). Hearings will be based exclusively on the record before the Agency at the time the Agency issued its determination. 35 Ill. Adm. Code 105.412. Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2002)), which only Red Rooster may extend by waiver. *See* 35 Ill. Adm. Code 101.308. If the Board fails to take final action by the decision deadline, Red Rooster may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2002). Currently, the decision deadline is August 16, 2005 (the 120th day after May 9, 2005). *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for August 4, 2005.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by June 8, 2005, which is 30 days after Red Rooster 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 May 19, 2005, 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