

ILLINOIS POLLUTION CONTROL BOARD

January 5, 2006

DALEE OIL COMPANY (SCWP/B),)	
)	
Petitioner,)	
)	
v.)	PCB 06-40
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On September 15, 2005, the Board, at the parties' request, extended until December 27, 2005, the time period within which Dalee Oil Company may appeal an August 19, 2005 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2004); 35 Ill. Adm. Code 105.406. On December 27, 2005, Dalee Oil Company filed a petition asking the Board to review the Agency's determination. The Agency approved the site classification work plan, with modifications, for Dalee Oil Company's leaking underground petroleum storage tank facility located at 905 North Hen House Road, Okawville, Washington County.

Dalee Oil Company appeals on the grounds that (1) the stated bases for the Agency determination are not supported by the record; (2) the Agency was able to determine whether the costs were for unpermitted purposes based on the record; (3) the Agency decision applies unpromulgated rules; and (4) the Agency may not rely on discretion when making reasonability decisions. Dalee Oil Company's petition meets the content requirements of 35 Ill. Adm. Code 105.408. The Board accepts the petition for hearing.

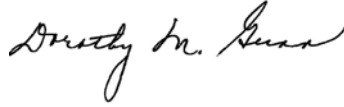
Dalee Oil Company has the burden of proof. 35 Ill. Adm. Code 105.112(a). Hearings will be based exclusively on the record before the Agency at the time the Agency issued its determination. 35 Ill. Adm. Code 105.412. Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (415 ILCS 5/40(a)(2) (2004)), which only Dalee Oil Company may extend by waiver (35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Dalee Oil Company may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2004). Currently, the decision deadline is April 26, 2006 (the 120th day after December 27, 2005). *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for April 20, 2006.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by January 26, 2006, which is 30 days after Dalee Oil Company 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 January 5, 2006, 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