

ILLINOIS POLLUTION CONTROL BOARD
March 16, 2006

ARLYN D. FISK d/b/a ARLYN FISK'S)	
SERVICE CENTER,)	
)	
Petitioner,)	
)	PCB 06-145
v.)	(UST Appeal)
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On March 13, 2006 Arlyn D. Fisk d/b/a Arlyn Fisk's Service Center (Arlyn Fisk) filed a petition asking the Board to review a February 2, 2006 determination of the Illinois Environmental Protection Agency (Agency). Because the postmark date of the petition is within the time for filing, the petition was timely filed. *See* 415 ILCS 5/40(a)(1) (2004); 35 Ill. Adm. Code 101.300(b)(2), 105.402. The Agency rejected the Site Investigation Plan and associated budget for Arlyn Fisk's leaking underground petroleum storage tank facility located at 210 East Pine Street in Percy, Randolph County.

Among other things, the Agency determination letter stated that "this incident is not subject to Title XVI of the Act or 35 Ill. Adm. Code 731" for specified reasons listed in the letter. Pet. Exh. A at 1. Arlyn Fisk appeals on the grounds that the reasons stated by the Agency for rejection are (1) contrary to the factual evidence in the record and (2) contrary to the provisions of the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (2004)) and Board regulations. Pet. at 2.

Arlyn Fisk's petition meets the content requirements of 35 Ill. Adm. Code 105.408. The Board accepts the petition for hearing. However, the Board strikes paragraph (7) of Arlyn Fisk's petition in which he purports to reserve "the right to add additional bases for reversal of the IEPA's decision, as any may become apparent." Pet. at 2. Neither the Act nor the Board's regulations contemplate addition of grounds for appeal once a timely petition has been filed. *See* 415 ILCS 5/40 (a)(1) (2004) and 35 Ill. Adm. Code 105.404 and 105.408.

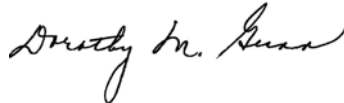
Arlyn Fisk has the burden of proof. 35 Ill. Adm. Code 105.112(a). Hearings will be based exclusively on the record before the Agency at the time the Agency issued its determination. 35 Ill. Adm. Code 105.412. Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline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

March 13, 2006). *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for July 11, 2006.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by April 12, 2006, which is 30 days after Arlyn Fisk 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 March 16, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board