

ILLINOIS POLLUTION CONTROL BOARD
March 5, 2009

SIMONS AUTO CENTER,)
)
 Petitioner,)
)
 v.) PCB 09-37
) (LUST Appeal)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

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

On December 4, 2008, the Board, at the parties' request, extended until March 1, 2009, the time period within which Simons Auto Center (petitioner) may appeal an October 21, 2008 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2006); 35 Ill. Adm. Code 105.406. On February 26, 2009, Simons Auto filed a petition asking the Board to review the Agency's determination.

The Agency denied Simons Auto's request for reimbursement from the Underground Storage Tank Fund regarding an underground storage tank site located at 10085 Lincoln Trail, Fairview Heights, St. Clair County. Simons Auto appeals on the grounds that the Agency wrongfully rejected petitioner's request for reimbursement. Simons Auto's petition meets the content requirements of 35 Ill. Adm. Code 105.408. The Board accepts the petition for hearing.

Simons Auto 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) (2006)), which only Simons Auto may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Simons Auto may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2006). Currently, the decision deadline is June 26, 2009 (the 120th day after date on which petitioner filed its petition). *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for June 18, 2009.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by March 30, 2009, which is the first business day after 30 days after Simons Auto 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, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 5, 2009, by a vote of 5-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

John Therriault, Assistant Clerk
Illinois Pollution Control Board