

ILLINOIS POLLUTION CONTROL BOARD
April 20, 2006

MIDWEST PETROLEUM COMPANY,)	
)	
Petitioner,)	
)	
v.)	PCB 06-153
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On April 4, 2006, Midwest Petroleum Company (Midwest) filed a petition asking the Board to review a February 28, 2006 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2004); 35 Ill. Adm. Code 105.404. At issue is the Agency's rejection of an amended plan and associated amended budget for Midwest's leaking underground petroleum storage tank facility located at 529 Maple Street, Shiloh, St. Clair County. On April 10, 2006, Midwest filed the Agency's final decision of February 28, 2006, as Exhibit A to the petition for review.

Midwest appeals on the grounds that the Agency's decision is arbitrary and capricious because the amended plan and budget clearly demonstrate that the additional personnel hours sought to be approved were incurred in the performance of corrective action activities and not in excess of those corrective action activities necessary to meet the minimum requirements of the Illinois Environmental Protection Act (Act) and regulations. Pet. at 4. Midwest notes that it appealed a previous Agency rejection of an amended corrective action plan budget for the same site in PCB 06-28, and that the Board issued a December 15, 2005 order finding the Agency properly denied Midwest's claims. *See Midwest v. IEPA*, PCB 06-28 (Dec. 15, 2005). Midwest also notes that on January 30, 2006, it appealed the Board's December 15, 2005 order to the Fifth District Appellate Court in Cause No. 5-06-0056. The appeal is pending. Pet. at 3.

The Board accepts Midwest's Exhibit A to the petition, and finds Midwest's petition meets the content requirements of 35 Ill. Adm. Code 105.408. The Board accepts the petition for hearing.

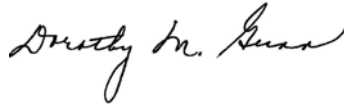
Midwest has the burden of proof. 35 Ill. Adm. Code 105.112(a). Hearings will be based exclusively on the record before the Agency at the time the Agency issued its determination. 35 Ill. Adm. Code 105.412. Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2004)), which only Midwest may extend by waiver. *See* 35 Ill. Adm. Code 101.308. If the Board fails to take final action by the decision deadline, Midwest may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2004). Currently, the decision deadline is August 2, 2006 (the 120th day after April 4, 2006). *See* 35 Ill.

Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for July 20, 2006.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by May 4, 2006, the first business day 30 days after Midwest 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 April 20, 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