

ILLINOIS POLLUTION CONTROL BOARD
June 5, 2003

FREEDOM OIL COMPANY (Springfield),)
)
Petitioner,)
)
v.) PCB 03-121
) (UST Fund)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by L.P. Padovan):

On February 20, 2003, at the parties' request, the Board extended until May 12, 2003, the time period for Freedom Oil Company (Freedom Oil) to appeal a January 6, 2003 decision of the Illinois Environmental Protection Agency (Agency). The decision concerns Freedom Oil's cleanup of petroleum that leaked from an underground storage tank (UST) at the company's gasoline service station at 2500 East Cook Street in Springfield, Sangamon County. On May 14, 2003, Freedom Oil filed a petition asking the Board to review the Agency's decision. *See* 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 101.300(b)(2) (Freedom Oil petition, received after deadline, is deemed filed on postmark date of May 12, 2003), 105.402, 105.406.

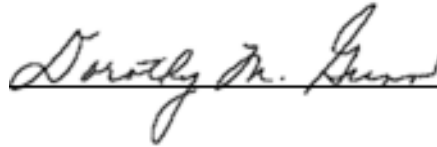
Freedom Oil asserts that the Agency erred in deciding that the company could not be reimbursed from the State UST Fund for \$5,003.67 in handling charges incurred by Freedom Oil. Petition at 2, Attach. Freedom Oil claims that the handling charges are reasonable and a necessary part of its cleanup. Petition at 2. The Board accepts the petition for hearing. Freedom Oil has the burden of proof. *See* 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 decision. *See* 35 Ill. Adm. Code 105.412. Accordingly, though the Board hearing affords petitioner the opportunity to challenge the Agency's reasons for its decision, information developed after the Agency's decision typically is not admitted at hearing or considered by the Board. *See Alton Packaging Corp. v. PCB*, 162 Ill. App. 3d 731, 738, 516 N.E.2d 275, 280 (5th Dist. 1987); *see also Community Landfill Co. & City of Morris v. IEPA*, PCB 01-170 (Dec. 6, 2001), *aff'd sub nom.* 331 Ill. App. 3d 1056, 772 N.E.2d 231 (3d Dist. 2002).

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 Freedom Oil may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Freedom Oil may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2002). Currently, the decision deadline is October 16, 2003, based on Freedom Oil's waiver. *See* 35 Ill. Adm. Code 105.114(a). A Board meeting is scheduled for that date.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its decision by June 13, 2003, which is 30 days after the Board received Freedom Oil's petition. *See* 35 Ill. Adm. Code 105.116, 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. *See* 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 June 5, 2003, by a vote of 6-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", is written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board