

ILLINOIS POLLUTION CONTROL BOARD

January 8, 2004

SIMPSON AUTO SERVICE,)	
)	
Petitioner,)	
)	
v.)	PCB 04-99
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

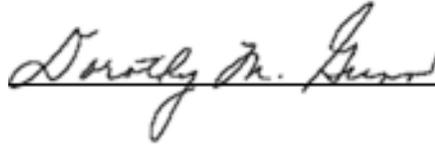
On December 22, 2003, Simpson Auto Service (Simpson) filed a petition asking the Board to review a November 13, 2003 final decision of the Illinois Environmental Protection Agency (Agency). Because the postmark date of the petition is within 35 days after the date of service of the Agency's final decision, the petition was timely filed. 35 Ill. Adm. Code 101.300(b)(2), 105.404. At issue is the Agency's approval of a high priority corrective action plan and budget, with modifications, regarding Simpson's UST site at 600 Berkshire, East Alton, Madison County. Simpson appeals on the grounds that the Agency determination was arbitrary and capricious. Simpson's petition meets the content requirements of 35 Ill. Adm. Code 105.408. The Board accepts the petition for hearing.

Simpson 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) (2002)), which only Simpson may extend by waiver. *See* 35 Ill. Adm. Code 101.308. If the Board fails to take final action by the decision deadline, Simpson may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2002). Currently, the decision deadline is April 20, 2004 (the 120th day after December 22, 2003). *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for April 15, 2004.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by January 22, 2004, which is 30 days after Simpson 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 8, 2004, by a vote of 5-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board