

ILLINOIS POLLUTION CONTROL BOARD  
April 21, 2005

MAC'S CONVENIENCE STORES, LLC,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 05-124
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by J.P. Novak):

On January 20, 2005, at the parties' request, the Board extended until April 11, 2005, the time period for Mac's Convenience Stores, LLC (Mac's Convenience Stores) to appeal a December 6, 2004 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 101.300(b), 105.402, 105.406. On April 13, 2005, Mac's Convenience Stores filed a petition asking the Board to review the Agency's determination. Because the postmark date of the petition is within the extended time for filing, the petition was timely filed. 35 Ill. Adm. Code 101.300(b)(2), 105.404. The Agency rejected a site investigation plan and budget for Mac's Convenience Stores' leaking underground petroleum storage tank facility located at 2901 Stevenson Drive, Springfield, Sangamon County.

Mac's Convenience Stores appeals on the grounds that (1) the Agency determination was without factual basis or legal support, was arbitrary and capricious, was inconsistent, and was otherwise not in accordance with applicable law; (2) the costs submitted were reasonable and are necessary to perform the site investigation activities; and (3) the Agency determination violated due process and fundamental fairness. Mac's Convenience Stores' petition meets the content requirements of 35 Ill. Adm. Code 105.408. The Board accepts the petition for hearing.

Accompanying the April 13, 2005 petition was a motion of David L. Hatchett to appear *pro hac vice* in this matter on behalf of Mac's Convenience Stores. Mr. Hatchett represents that he has been a member in good standing of the bar in State of Indiana since 1996. The Board grants that motion, and David L. Hatchett may appear in this matter on behalf of Mac's Convenience Stores.

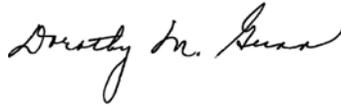
Mac's Convenience Stores has the burden of proof. 35 Ill. Adm. Code 105.112(a). Hearings will be based exclusively on the record before the Agency at the time the Agency issued its determination. 35 Ill. Adm. Code 105.412. Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2002)), which only Mac's Convenience Stores may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Mac's Convenience Stores may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2002). Currently, the decision deadline is

August 11, 2005 (the 120th day after April 13, 2005). *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for August 4, 2005.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by May 13, 2005, which is 30 days after Mac's Convenience Stores 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 21, 2005, by a vote of 5-0.

A handwritten signature in cursive script, appearing to read "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board