## ILLINOIS POLLUTION CONTROL BOARD February 17, 2005

MAC'S CONVENIENCE STORES, LLC,	)	
Petitioner,	)	
v.	)	PCB 05-101 (UST Appeal)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	(OST Appear)
Respondent.	) )	

## ORDER OF THE BOARD (by A.S. Moore):

In a December 16, 2004 order, the Board gave Mac's Convenience Stores, LLC (Mac's) until February 3, 2005, to file an amended petition for review of an October 21, 2004 determination of the Illinois Environmental Protection Agency (Agency). The Agency's determination concerns petroleum contamination at Mac's gasoline service station, which is located at 105 South Front Street in Braidwood, Will County. In its determination, the Agency rejected several submittals from Mac's under the Leaking Underground Storage Tank (UST) program: a Site Investigation Plan (SIP) and related Budget, as well a 45-Day Report. The Board found that Mac's original petition was timely, but it was unclear whether the petition was filed by an attorney and whether Mac's sought reversal of the Agency's determination regarding the 45-Day Report, or only the SIP and Budget.

On February 7, 2005, the Board received Mac's amended petition. Under the Board's procedural rules, the amended petition is considered timely-filed because it was sent by U.S. Mail postmarked on the filing deadline of February 3, 2005. *See* 35 Ill. Adm. Code 101.300(b)(2). Mac's amended petition is accompanied by the motion of out-of-State attorney David L. Hatchett to appear *pro hac vice*. According to the motion, which is supported by affidavit, Mr. Hatchett is a member in good standing of the Indiana bar. The Board grants the motion to allow Mr. Hatchett to appear on behalf of Mac's in this appeal. *See* 35 Ill. Adm. Code 101.400(a)(3).

The amended petition states that Mac's appeals not only the Agency's rejection of the SIP and Budget, but also the Agency's rejection of the 45-Day Report. The amended petition also provides grounds for appeal. The Board finds that Mac's amended petition remedies the deficiencies of the original petition identified in the Board's December 16, 2004 order. Accordingly, the Board accepts the amended petition for hearing.

Mac's 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 determination. *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); 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 Mac's 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 may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2002). Currently, the decision deadline is June 7, 2005, which is the 120th day after the Board received the amended petition. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for June 2, 2005.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by March 9, 2005, which is 30 days after the Board received Mac's amended petition. *See* 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. *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 February 17, 2005, by a vote of 4-0.

Dorothy M. Gunn, Clerk

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Illinois Pollution Control Board