

ILLINOIS POLLUTION CONTROL BOARD
January 9, 2003

MAHR'S SALES & SERVICE,)	
)	
Petitioner,)	
)	
v.)	PCB 03-46
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

The Board accepts for hearing Mahr's Sales & Service's (Mahr's) timely filed petition appealing the Environmental Protection Agency's (Agency) decision. The Agency modified the proposed budget for the site classification work plan regarding an underground storage tank site at 8810 East Illinois Highway 9 in Ellisville, Fulton County. On appeal, Mahr's argues that the Agency's modification of the site classification work plan was arbitrary and capricious. Mahr's petition meets the content requirements of 35 Ill. Adm. Code 105.408.

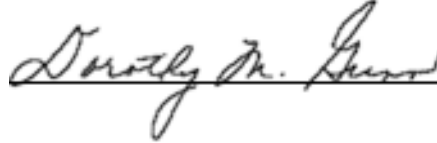
On October 17, 2002, the Board, at the parties' request, extended until January 6, 2003, the time period within which Mahr's may appeal a September 3, 2002 determination of the Agency. *See* 415 ILCS 5/40(a)(1) (2000), *amended by* P.A. 92-0574, eff. June 26, 2002; 35 Ill. Adm. Code 105.406. On January 6, 2003, Marh's filed a petition asking the Board to review the Agency's determination.

Mahr's 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) (2000), *amended by* P.A. 92-0574, eff. June 26, 2002), which only Mahr's may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Mahr's may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2000), *amended by* P.A. 92-0574, eff. June 26, 2002. Currently, the decision deadline is May 3, 2003 (the 120th day after January 6, 2003). *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for May 1, 2003.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by February 5, 2003, which is 30 days after Mahr's 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 9, 2003, by a vote of 5-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn". The signature is written in black ink and is positioned above a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board