

ILLINOIS POLLUTION CONTROL BOARD
February 6, 2003

EAST SIDE SHELL,)	
)	
Petitioner,)	
)	
v.)	PCB 03-50
)	(UST Fund)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On November 7, 2002, the Board, at the parties' request, extended until January 28, 2003, the time period within which East Side Shell may appeal a September 25, 2002 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.406. On January 28, 2003, East Side Shell placed into the U.S. mail a petition asking the Board to review the Agency's determination. The Board received the petition on January 30, 2003. Because the postmark date was on the final date of the extended appeal period, the petition was timely filed. 35 Ill. Adm. Code 101.300(b)(2).

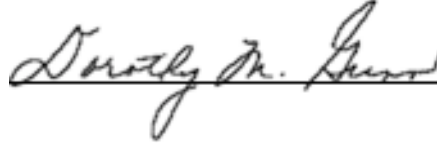
The Agency rejected the amended site classification work plan budget regarding a leaking underground storage tank site at 1202 East Main in West Frankfort, Fulton County. East Side Shell appeals on the grounds that the Agency's decision was arbitrary and capricious. East Side Shell's petition meets the content requirements of 35 Ill. Adm. Code 105.408. The Board accepts the petition for hearing.

East Side Shell 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 East Side Shell may extend by waiver. *See* 35 Ill. Adm. Code 101.308. If the Board fails to take final action by the decision deadline, East Side Shell may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2002). Currently, the decision deadline is May 30, 2002 (the 120th day after January 30, 2003). *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for May 15, 2003.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by March 3, 2003, the first business day after March 1, 2003, which is 30 days after East Side Shell 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 February 6, 2003, by a vote of 7-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board