

ILLINOIS POLLUTION CONTROL BOARD  
April 17, 2003

FREEDOM OIL COMPANY,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 03-54
	)	PCB 03-105
ILLINOIS ENVIRONMENTAL	)	PCB 03-179
PROTECTION AGENCY,	)	(UST Fund)
	)	PCB 03-56
Respondent.	)	(UST Appeal)
	)	(Consolidated)

ORDER OF THE BOARD (by L.P. Padovan):

On April 4, 2003, Freedom Oil Company (Freedom Oil) timely filed a petition asking the Board to review the Illinois Environmental Protection Agency's (Agency) decision partially denying Freedom Oil's request to be reimbursed from the State's Underground Storage Tank (UST) Fund. *See* 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.402. The Agency's decision concerns Freedom Oil's leaking UST site, a service station at 401 South Main Street in Paris, Edgar County. Freedom Oil also moves the Board to consolidate this appeal with three previously consolidated UST appeals of Freedom Oil, docketed PCB 03-54, PCB 03-105, and PCB 03-56. For the reasons below, the Board accepts this petition for hearing and grants Freedom Oil's motion to consolidate.

In its petition, Freedom Oil asserts that the Agency erred in deciding Freedom Oil could not be reimbursed \$169,051.90 from the UST Fund. Petition at 2. Freedom Oil clarifies by April 8, 2003 filing that the petition pertains to three leaking UST incident numbers: 20020433; 20021122; and 20021420. Freedom Oil claims, among other things, that the Agency denied approximately \$143,000 of the \$169,051.90 by improperly apportioning the costs to ineligible USTs at the site. Petition at 2.<sup>1</sup>

The Board accepts the petition for hearing. Freedom Oil 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 decision. *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); *see also Community Landfill Co. & City of Morris v. IEPA*,

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<sup>1</sup> In its application to the Agency, Freedom Oil had requested over \$709,000 in UST Fund reimbursement for June 30, 2003 to November 22, 2002. The Agency decision stated a voucher for \$540,696.60 would be prepared to pay Freedom Oil. Petition Exhibit at 1.

PCB 01-170 (Dec. 6, 2001), *aff'd sub nom.* 331 Ill. App. 3d 1056, 772 N.E.2d 231 (3d Dist. 2002).

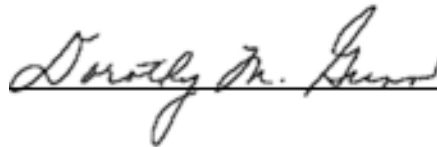
Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2002)), which only Freedom Oil may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Freedom Oil may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2002). Currently, the decision deadline is August 4, 2003, which is the first business day following the 120th day after receipt of Freedom Oil's petition. *See* 35 Ill. Adm. Code 101.300(a), 105.114. The Board meeting immediately before the decision deadline is scheduled for July 24, 2003.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its decision by May 5, 2003, which is the first business day following the 30th day after receipt of Freedom Oil's petition. *See* 35 Ill. Adm. Code 101.300(a), 105.116, 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).

Freedom Oil also asks the Board to consolidate this appeal (PCB 03-179) with three other Freedom Oil appeals (PCB 03-54, PCB 03-105, and PCB 03-56) that the Board, by order of February 20, 2003, consolidated for hearing. Petition at 2-3. Freedom Oil states that factual and legal issues in the appeals are similar and consolidation will conserve resources. *Id.* at 3. The Board notes that the appeals involve the same parties, the same Edgar County leaking UST site, and issues of Freedom Oil's cleanup and cleanup cost reimbursement from the UST Fund. The Agency has not objected to consolidation. The Board grants Freedom Oil's motion to consolidate. The appeals are consolidated for hearing, but not necessarily for Board decision. *See* 35 Ill. Adm. Code 101.406. Future filings must reflect the amended caption of this order.

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 17, 2003, by a vote of 6-0.

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

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board